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United States
Department of
Agriculture

Forest
Service

**Legislative
Affairs**

A Case Study of Forest Service Legislation in the Legislative Process

The Small Tracts Act

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U. S. FOREST SERVICE

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THE LEGISLATIVE PROCESS
A CASE STUDY OF FOREST SERVICE LEGISLATION
THE SMALL TRACTS ACT IN THE 97TH CONGRESS

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THE BILLS AS INTRODUCED:

S. 705

H.R. 3021 and

Senate and House Congressional Record

II

97TH CONGRESS
1ST SESSION

S. 705

To authorize the Secretary of Agriculture to convey certain National Forest System lands, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 12 (legislative day, FEBRUARY 16), 1981

Mr. DOMENICI introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

---

A BILL

To authorize the Secretary of Agriculture to convey certain National Forest System lands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of Agriculture (hereinafter referred to as the "Secretary") is authorized, when the Secretary determines it to be in the public interest—

(1) to sell or exchange, by quitclaim deed, all right, title and interest of the United States in and to National Forest System lands described in section 2; and

(2) to accept, as consideration for the lands sold or exchanged, other lands, interests in lands, or cash payment, or any combination of such forms of consideration, equal in value to the fair market value of the lands, including the mineral estate, sold or exchanged by the Secretary.

The Secretary shall insert in any such quitclaim deed such terms, covenants, conditions, and reservations as the Secretary deems necessary to ensure protection of the public interest, including protection of the scenic, wildlife and wilderness values of the National Forest System and provision for appropriate public access to and use of lands within the System.

SEC. 2. The National Forest System lands which may be sold or exchanged under this Act are those the sale or exchange of which is not practicable under any other authority of the Secretary and which are—

(1) parcels of forty acres or less which are interspersed with or adjacent to mineral patents, which are determined by the Secretary, because of location or size, not to be subject to efficient administration, and which have a fair market value, as determined by the Secretary through appraisal within one year before or after the date application for sale or exchange is made to the Secretary, of not more than $150,000;

(2) parcels of ten acres or less which are encroached upon by improvements occupied or used under claim or color of title by persons to whom no advance notice was given that the improvements encroached or would encroach upon such parcels, and who in good faith relied upon an erroneous Federal survey, title search or other land description indicating that there was not such encroachment; and

(3) road rights-of-way, reserved or acquired, which are substantially surrounded by lands not owned by the United States and which are no longer needed by the United States, subject to the first right of abutting landowners to acquire such rights-of-way.

SEC. 3. Any person to whom lands are conveyed pursuant to this Act shall bear all reasonable costs of administration, survey and appraisal incidental to such conveyance, as determined by the Secretary, except in those cases in which the Secretary determines that it would be consistent with the public interest to waive payment of such costs by such person. In the case of road rights-of-way conveyed pursuant to this Act, the person to whom the right-of-way is conveyed shall reimburse the United States for the value of any improvements to such right-of-way which may have been made by the United States.

SEC. 4. Conveyance of any road rights-of-way under this Act shall not be construed as permitting any designation, maintenance, or use of such rights-of-way for road or other purposes except to the extent permitted by State or local law and under conditions imposed by such law.

SEC. 5. In carrying out the land exchanges authorized in this Act the Secretary is authorized to use the procedures of the Act entitled "An Act to facilitate exchanges of land under the Act of March 20, 1922 (42 Stat. 465), for use for public schools, and for other purposes", approved December 4, 1967 (Public Law 90–171; 81 Stat. 531).

SEC. 6. For purposes of this Act, the word "person" includes any State or any political subdivision or entity thereof.

SEC. 7. The Secretary shall issue regulations to carry out the provisions of this Act, including specification of—

(1) criteria which shall be used in making the determination as to what constitutes the public interest; and

(2) factors relating to location or size which shall be considered in connection with determining the lands to be sold or exchanged under clause (1) of section 2.

SEC. 8. Nothing in this Act shall authorize conveyance of Federal lands within the National Wilderness Preservation System.

By Mr. DOMENICI:

S. 705. A bill to authorize the Secretary of Agriculture to convey certain National Forest System Lands, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

S. 706. A bill to establish a national policy for the timely notice, conduct, approval, and record of Federal land surveys, and for other purposes; to the Committee on Energy and Natural Resources.

LEGISLATION RELATING TO LAND SURVEY ISSUES IN THE WEST

● Mr. DOMENICI. Mr. President, I am pleased today to introduce legislation directed toward resolving longstanding Federal land survey issues prevalent throughout the Western United States, which are affecting the property titles of thousands of Americans. This legislation will provide the Secretary of Agriculture with the administrative capability to address as many as 50,000 title claim and trespass situations existing throughout the National Forest System and close to 100,000 title claims with the Department of Interior.

This problem was recently brought to my attention when citizens of Lincoln and Otero Counties in southeastern New Mexico revealed that their property titles were being adversely affected by "improved" Federal land surveys being made by the Bureau of Land Management and the Forest Service.

Hundreds of property owners, the New Mexico State Land Commissioner, New Mexico Department of Agriculture, Otero Soil and Water Conservation District, New Mexico Cattle Growers Association, Arizona Cattle Growers Association, village of Cloudcroft, Otero County Electric Cooperative, Otero County Commissioner, New Mexico Association of Counties, National Association of Counties, land surveyors of New Mexico, New Mexico private landowners, New Mexico abstractors, New Mexico bankers, New Mexico savings and loan associations, real estate firms of Otero County, State Representatives John Mershon and Maurice Hobson, State Senator Wyatt Atkins, Former State Senator Aubrey Dunn, Steering Committee Chairman Dorsey Bonnell, and many other concerned New Mexicans have all joined together to seek to resolve a critical far-reaching problem.

The Forest Service, as part of their continuing program of responsible management, have been engaged for many years in properly locating and identifying the boundaries of National Forest System lands.

This effort has become increasingly more important as land values rise, and resource values increase, in order to protect the interests of all the people, as well as adjacent landowners.

However, two distinct problems have become apparent in the conduct of these surveys; the first related to timeliness of the survey actions, the second related to the increasing technical accuracies surveyors are capable of achieving today.

During the period 1967–69, the Forest Service contracted with the Bureau of Land Management, which has the responsibility for such matters, to conduct a retracement of the original turn of the century General Land Office survey for certain section and township corners within the Lincoln National Forest in southeastern New Mexico.

During the conduct of the survey, many original corners could not be found. The surveyors reconstructed from the original survey notes, and by other accepted methods, the locations of the original corners and set standard brass survey monuments marking these locations.

In late 1969, the retracement was abandoned for lack of funds. Since that time, the Bureau of Land Management has failed to issue a certificate of approval certifying the 1967–69 survey to be correct, and have not removed the temporary brass monuments which have stayed in place, erroneously now, for as many as 14 years. Within the last 3 years, with funding once again available, the Bureau of Land Management has retraced much of the 1967–69 resurvey and has relocated many of these corners to what is presumably determined to be the proper location.

A single corner may have been moved several feet in this period of time. A certificate of approval has not yet been issued by the BLM for this latest survey either.

Another problem has resulted from this fundamental problem. Local private land surveyors have, albeit improperly, utilized the uncertified brass BLM survey monuments over the last 14 years as "established official points of reference" to make private land surveys which title companies and lending institutions have accepted as "certified surveys" for clear title descriptions.

Admittedly, these surveys should never have been accepted by the title companies, nor should the surveys have been conducted from an uncertified monument. In defense of the private land surveyor, I should say that neither the 1967–69 survey maps, nor the 1979–80 survey maps, were available to the private land surveyor in the local land office, nor are the monuments dated to reflect the year of survey.

In other words, there was nothing of record to indicate a particular monument was not the official monument. There was certainly no reason to believe a monument location would be altered in the future.

The second problem I mention related to the accuracy of surveys. The Forest Service uses a highly accurate laser range pole and electronic transit when subdividing sections in the survey process to locate interior corners to the section in order to establish forest boundaries. Original private land surveys used methods previously available and accepted within the realm of practicability such as the compass, chain, and transit. Prior individual surveys on private lands, performed by registered engineers of the State of New Mexico, from an established corner "then available" are being considered in error by the recent Forest Service highly accurate subdivision surveys, even though the prior surveys have had a permanency of several decades. The sophisticated technology of today far exceeds the capabilities of earlier equipment, particularly in mountainous and wooded terrain.

The results of the new methods have been to find a number of surveys of longstanding in error and the declaration by the Forest Service that their survey is correct. Consequently, fences are now off line, sometimes by 50, 60 or more feet, and must be moved to conform to the new line as suggested by the Forest Service.

In fairness, many old fences were placed on a "line of convenience," that is, from tree to tree, to skirt a rocky area, et cetera, and only approximated the property line. These are not the problems at issue here.

The problem at issue has resulted in loss of assets, and the clouding of property titles of privately owned land, which had previously perfected titles. Clearing these titles now involves waiting until all Federal land resurveying and subdividing is completed and certified. If a discrepancy exists, a private landowner must seek relief through litigation against the Federal Government, or pay for a new private land survey to redescribe his title. In the meantime, no one can sell or exchange property with an insured title.

In addition, the landowner may have been paying taxes on lands that will ultimately not be his.

Many of the individual cases here could be resolved if the Federal land surveyors followed the administrative guidelines in the book "Manual of Surveying Instructions—USDI, Bureau of Land Management" and the act of March 3, 1909, as amended, which requires the surveyor not to impair the bona fide rights of the landowner by such resurvey or retracement. Bona fide rights are those acquired in good faith under the law, and the surveyor should be concerned with the question whether the lands have actually been located in good faith.

By fundamental law the corners of the original survey are unchangeable. Even if the original surveys were poorly executed, it still controls the boundaries of land patented under it. The problem stems, in some cases, from the Federal surveyor's failure to conduct the survey with a "spirit of cooperation" to work with the individual affected landowners and their titles, records of survey, and maps to establish if in fact a bona fide right acquired in good faith is

present and should be considered as an unchangeable original survey.

Many affected landowners, given the current situation, are recognized by the Forest Service as innocent trespassers on Federal lands but, under existing law, have no recourse other than applying for a long-term lease of the lands in contention. The Forest Service has been very cooperative in granting special use permits to landowners so affected.

The legislation which I introduce today recognizes that in certain cases a landowner having no advance notice of the fact that his improvement encroached upon Federal land, and who in good faith relied upon an erroneous survey, title search, or other land description indicating there was not such encroachment, may acquire those parcels up to a maximum of 10 acres, or 40 acres if intersected with or adjacent to mineral patents.

This legislation will eliminate the need for correcting many boundary disputes through private relief bills in the Congress.

FEDERAL LAND SURVEY ACT OF 1981

Mr. President, I also introduce today another bill that will help alleviate future land survey problems of the type I have outlined above.

This bill will encourage the timely conduct and approval of Federal land surveys, it will foster and promote a spirit of cooperation with the landowners and local government in the survey of public lands, it will promote the stability and permanence of the Nation's records of survey, and will provide the basis for a multipurpose national land information system.

Section 3 of this bill deals with the role of the Federal Government in this problem area of official land surveys and outlines the general responsibilities of the Federal Government in this area.

Section 4 spells out the exact steps the Secretary of the Interior or such agency as designated by the Secretary should take in carrying out the responsibilities.

These steps include the establishment of a systematic integrated approach which coordinates all Federal land surveys programs with affected parties by the Federal agencies, State agencies, local agencies, or private citizens.

The section further provides for such items as timely notice of the intent to plan, conduct, certify, and record such surveys or resurveys.

This section further spells out such items as proper notice to the parties involved, the initiating period for conducting surveys the time period in which the surveys should be completed, the time frame in which certification of the survey should take place and calls for the monumenting and certification of a section center corner when a subdivision survey is conducted by the Secretary or the Secretary's designee.

The section also contains a provision that if certification does not take place in a timely manner, all temporary monuments will be removed and that a plan for resurvey or retracement is initiated immediately.

The final section of this bill, section 4 (b), subsection 1, 2, and 3 deal with authorizing the Secretary of the Interior and the Secretary of Agriculture to conduct an assessment of a national cadastre information needs and develop a feasibility study for establishing a multipurpose national cadastre system.

Sometime early in the next century it may be possible to check land records easily and quickly to learn precisely where a parcel of American land is, what it is like, what and where the easements are, what its tax status is, and who owns it. As planners, assessors, legislators, engineers, insurers, appraisers, lenders, builders, surveyors, and the buyers and sellers of land know well, land records of the United States generally are quaint, arcane, clumsy to probe, and not altogether reliable or helpful.

Land records may be stored by computer in some places now, but the information they contain may be no better and not much more accessible than records on paper. Maps made for legal and fiscal purposes—cadastral maps—often are inadequate.

For most Americans title search and survey are encountered directly only as sometimes troubling legal rituals in real estate transactions. Out-of-the-ordinary land information questions—say those involved in siting a transportation or utility corridor or in economic and land-use studies or in natural resource appraisal and regulation—are answered if at all only by numerous agencies, public and private, each maintaining its own maps for its own purposes, with the maps often in conflict.

By several estimates the consequent direct added costs to individuals and to Federal, State, and local governments run into many millions of dollars annually; the consequent indirect costs of recurring inability to manage and to properly assess land are inestimable.

Most of the country's title—and assessment—records systems "have undergone only relatively small changes in the last 100 years," the report of a National Research Council panel says, reiterating the complaints of attorneys, geodesists, geographers, real-estate specialists, public administrators, surveyors, and others who have studied these problems. Land information systems for planning and management "have evolved largely since the mid-1960's," and the twain do not meet;

"Title—and assessment—records systems are labor intensive and do not provide necessary information about the land in a timely, unambiguous, authoritative, and economical manner. Land-management information cannot readily be integrated with title and assessment data," the existence of computers and geodetic and Earth-resource satellites and aerial photogrammetry notwithstanding.

Land ownership and development were recorded in the Domesday Book of Norman England for the purposes of assessment. The land-title and assessment records in most U.S. county halls of records today take their form largely from the nature of the dispositions of land in the early development of the United States, but they are changed little in concept from compilations in the Domesday Book nearly 1,000 years ago. The Domesday Book offers the collateral benefit of a portrait of uses of the land; U.S. cadastral records today rarely do.

Over the last 10 years pressures have been building to modernize cadastral records systems in the United States, as needs to cut land-transfer costs, to determine land-ownership, and to ease access to all sorts of land information have become more evident. According to the National Research Council panel's report;

> There is a critical need for a better land-information system in the United States to improve land-conveyance procedures, furnish a basis for equitable taxation, and provide much needed information for resource management and environmental planning.

The problem is how. The answers and timing will affect every land-taxing jurisdiction in the United States.

At the request of several Federal agencies, a panel of the National Research Council assembly of Mathematical and Physical Sciences' Committee on Geodesy was appointed to consider Federal responsibilities in the possible development of nationally usable, multipurpose cadastre—a record of the nature and extent of interests in land. Such interests and property rights, the Panel on a Multipurpose Cadastre noted:

> May be narrowly construed as a legal right capable of ownership or more broadly interpreted to include any uniquely recognized relationship among people with regard to the acquisition and management of land.

The panel called not for any central land-bank, but for independently undertaken changes to make land information more accessible and to foster intercomparability of records that more than one agency maintain concerning the same land, each parcel of which, the panel said, should have its own, unique identifying number. Local land-parcel registers would identify parcels using these identifiers, which then would serve as indexes to other records where descriptions of the land could be found, and identifiers would appear on parcel index maps.

One-stop shopping for all information available on a parcel, tract, or larger area is not likely, but land-data searches would be faster and more productive—assuming of course that quality control, geodetic control, and considerations of consistency are kept in mind as land-information systems are reshaped.

Mr. President, I ask unanimous consent that the text of both these bills be inserted in the RECORD following these remarks.

There being no objection. the bills were ordered to be printed in the RECORD, as follows:

97TH CONGRESS
1ST SESSION

H. R. 3021

To authorize the Secretary of Agriculture to convey certain National Forest System lands, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 6, 1981

Mr. MARLENEE (for himself and Mr. WEAVER) introduced the following bill; which was referred jointly to the Committees on Agriculture and Interior and Insular Affairs

---

A BILL

To authorize the Secretary of Agriculture to convey certain National Forest System lands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of Agriculture, referred to in this Act as the "Secretary", is authorized, when the Secretary determines it to be in the public interest (1) to sell or exchange, by quitclaim deed, all right, title, and interest of the United States in and to National Forest System lands described in section 2; and (2) to accept, as consideration for the lands sold or exchanged, other lands, interests in lands, or cash

payment, or any combination for such forms of consideration, equal in value to the fair market value of the lands, including the mineral estate, sold or exchanged by the Secretary. The Secretary shall insert in any such quitclaim deed such terms, covenants, conditions, and reservations as the Secretary deems necessary to ensure protection of the public interest, including protection of the scenic, wildlife, and wilderness values of the National Forest System and provision for appropriate public access to and use of funds within the System.

SEC. 2. The National Forest System lands which may be sold or exchanged under this Act are those the sale or exchange of which is not practicable under any other authority of the Secretary and which are (1) parcels of forty acres or less interspersed with or adjacent to mineral patents, are determined by the Secretary, because of location size, not to be subject to efficient administration, and have a fair market value, as determined by the Secretary through appraisal within one year before or after the date application for sale or exchange is made to the Secretary, of not more than $150,000; (2) parcels of five acres or less which are encroached upon by improvements occupied or used under claim or color of title by persons to whom no advance notice was given that the improvements encroached or would encroach upon such parcels, and who in good faith relied upon

an erroneous non-Federal survey, title research, or other land description indicating that there was no such encroachment; and (3) road rights-of-way, reserved or acquired, which are substantially surrounded by lands not owned by the United States and which are no longer needed by the United States.

SEC. 3. Any person to whom lands are conveyed pursuant to this Act shall bear all reasonable costs of administration, survey, and appraisal incidental to such conveyance, as determined by the Secretary, except in those cases in which the Secretary determines that it would be consistent with the public interest to waive payment of such costs by such person. In the case of road rights-of-way conveyed pursuant to this Act, the person to whom the rights-of-way is conveyed shall reimburse the United States for the value of any improvements to such right-of-way which may have been made by the United States.

SEC. 4. Conveyance of any road rights-of-way under this Act shall not be construed as permitting any designation, maintenance, or use of such rights-of-way for road or other purposes except to the extent permitted by State or local law and under conditions imposed by such law.

SEC. 5. For purposes of this Act, the word "person" includes any State or any political subdivision or entity thereof.

SEC. 6. The Secretary shall issue regulations to carry out the provisions of this Act, including specification of (1) criteria which shall be used in making the determination as to what constitutes the public interest; and (2) factors relating to location or size which shall be considered in connection with determining the lands to be sold or exchanged under clause (1) of section 2.

SEC. 7. Nothing in this Act shall authorize conveyance of public lands within the National Wilderness Preservation System.

○

CONVEYANCE OF FOREST SERVICE LANDS

HON. RON MARLENEE

OF MONTANA

IN THE HOUSE OF REPRESENTATIVES

Monday, April 6, 1981

● Mr. MARLENEE. Mr. Speaker, today my colleague from Oregon, Mr. WEAVER, and I introduced legislation that will permit the Forest Service to convey, by quitclaim deed, certain small parcels of national forest system land which cannot be practicably disposed of in any other manner. Lands which may be disposed of are: First, road right-of-way which are no longer needed by the United States; second, parcels of 5 acres or less which were innocently encroached upon by persons who relied in good faith on erroneous surveys; and third, parcels of 40 acres or less, but worth less than $150,000, that are interspersed with, or adjacent to, mineral patents.

Upon creation of the national forests, the Forest Service came to administer lands which are scattered and of little or no practical use for national forest system purposes. The Forest Service estimates they hold 200,000 tracts of land of which the size, shape, and/or location make them difficult to administer.

For example, many mineral patents are no longer held for their mineral value, and the land is now supporting ranches, power sites, industrial plants, and vacation homesites. Intermingled with these sites are unpatented public lands of varying shape and size owned by the Forest Service and acquired upon creation of the national forests. Such lands are of little benefit to the Forest Service.

Another example showing the need for this legislation are the 50,000 title claim cases existing on national forest lands. Such cases arise when persons acquire land through innocent occupancy or good faith trespass and a subsequent survey finds these lands overlap Forest Service property. Oftentimes such claims are of an acre or less in nature and were the result of improper line survey or an error in the title or land description. At present, such cases must be resolved through long and cumbersome administrative procedures or by Congress. The proposed legislation would provide for an orderly transfer of title on such properties.

Similar legislation was introduced last Congress by the gentleman from Oregon (Mr. WEAVER) and had the full support of the Forest Service. Although the legislation easily passed both the House and Senate, it was vetoed by the President due to an amendment added by the Senate in the closing hours of the 96th Congress. The amendment did not relate to the transfer of land by the Forest Service, but rather related to operations of the Alaska Railroad.

Let me assure my colleagues that the proposed legislation is not a land giveaway. Nor will such land transfers adversely impact upon the national forest system. The legislation assures that only small land parcels may be transfered and does not permit the Secretary of Agriculture to convey any lands within the National Wilderness Preservation System.

Mr. Speaker, this legislation is straightforward and has a wide base of support, and we urge our colleagues to join us in cosponsorship.●

THE COMMITTEE PROCESS

SENATE AGRICULTURE, NUTRITION, AND FORESTRY COMMITTEE:

- Request For Report
- USDA Report to Committee on S. 705
- USDA Testimony before Subcommittee by R. Max Peterson
- Committee Report on S. 705
- S. 705 as Amended and Reported by Committee

CAT - 407667

JESSE HELMS, N.C., CHAIRMAN

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United States Senate

COMMITTEE ON
AGRICULTURE, NUTRITION, AND FORESTRY
WASHINGTON, D.C. 20510

March 17, 1981

Honorable John R. Block
Secretary
U. S. Department of Agriculture
Washington, D. C. 20250

Dear Mr. Secretary:

Enclosed are copies of S. 705 and ~~S. 712,~~ which have been referred to the Committee on Agriculture, Nutrition, and Forestry.

I shall welcome reports on this legislation, including estimates of the costs involved and any additional regulation of businesses and individuals which would be involved in carrying them out.

It would be helpful to provide cost estimates according to the form required under section 252(a)(1)(A) of the Legislative Reorganization Act of 1970, and regulatory impact statements in the form indicated under Rule XXIX section 5(a) of the Standing Rules of the Senate.

With every good wish, I am

Sincerely,

JESSE HELMS
Chairman

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DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

October 21 1981

Honorable Jesse Helms
Chairman, Committee on Agriculture,
Nutrition and Forestry
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

As you requested, here is our report on S. 705, a bill "To authorize the Secretary of Agriculture to convey certain National Forest System land, and for other purposes," and on S. 160, a bill "To authorize the Secretary of Agriculture to convey certain National Forest System lands, under specified conditions, to direct the Secretary of the Interior to certify survey monuments within one hundred and eighty days, and for other purposes."

The Department of Agriculture recommends that S. 705 be enacted with our proposed amendments in lieu of S. 160.

S. 705 would authorize the Secretary of Agriculture to sell or exchange certain National Forest System lands at fair market value when the Secretary determines it to be in the public interest. A quitclaim deed would convey the land sold or exchanged and would contain terms, covenants, conditions and reservations necessary to protect the public interest, including public access to other National Forest System lands. Any conveyance could be made to a State or political subdivision of a State as well as to private parties.

The lands which would be sold or exchanged are of three types: (1) tracts of 40 acres or less interspersed with or adjacent to patented mineral claims which cannot be efficiently administered and which have a fair market value of not more than $150,000; (2) parcels of 10 acres or less which are encroached upon by improvements occupied or used by persons who relied upon an erroneous Federal survey, title search or land description and who had not been given advance notice that their improvements would encroach upon the Federal land; or (3) road rights-of-way, either reserved or acquired, substantially surrounded by privately owned lands and which are no longer needed by the United States.

S. 705 would require persons receiving these lands to bear the costs of conveyance unless waived by the Secretary. Conveyance of road rights-of-way would require reimbursement to the United States by the recipient for the value of any improvements. The abutting landowners would be given the first opportunity to acquire the road rights-of-way. The bill would prohibit conveyance of any Federal lands within the National Wilderness Preservation System.

S. 160 is a more limited bill and would only address a small part of the concerns on which S. 705 is based. We have included, as part of our supplemental statement, a detailed analysis of S. 160 and our reasons for supporting S. 705 with amendments rather than S. 160.

S. 705 would provide authority to convey three types of small, irregularly shaped tracts of National Forest System land. These are typically separate, isolated units having special management problems which impair efficient administration. Present authorities, including the General Exchange Act of March 20, 1922, are not adequate to handle the unique nature of these tracts. Administrative remedies, such as special use permits, do not provide a satisfactory long-term solution. S. 705, with the amendments we recommended, would provide authority to more efficiently administer National Forest System lands.

The mineral fractions are residual Federal lands remaining after the patenting of mineral claims in the western States over the last century. Due to the manner in which the claiming occurred, the residual lands are of an infinite variety of sizes and shapes. Many of these lands came under the administrative responsibility of the Forest Service upon creation of the National Forests. Most of these lands are no longer held for their mineral values and are of little practical use for National Forest System purposes. We believe that the $150,000 limitation imposed by S. 705 should apply not only to mineral fractions but to the other two types of tracts as well. We also believe the term "mineral patents" should be clarified to refer to those lands transferred out of Federal ownership under the mining laws.

Encroachment, or good faith trespass, upon National Forest System land occurs when improvements are constructed or are being used on a parcel of land acquired in good faith by a private party but which is later found to overlap Federal land. This overlap may occur due to an improper property line survey or an error in the title or land description. This has happened when private lands adjoining public lands are subdivided and sold. The trespass would be considered good faith if the private party had no knowledge that the improvements would encroach upon the Federal lands. The bill would limit these cases to those caused by erroneous Federal surveys. We believe this is unnecessarily limiting and would not allow us to deal with cases where erroneous private surveys cause encroachment. There are few known instances where a Federal survey error led to encroachment. On the other hand, there are an estimated 50,000 title claim cases existing on National Forest System lands--a large number of which involve good faith trespass due to faulty private surveys. These occur throughout the United States. These are generally of small size, most involve less than 1 acre. We recommend that S. 705 be broadened to include encroachment cases that occur as a result of private surveys. We believe that such cases should be limited to a maximum size of 5 acres. This limit would encompass about 95 percent of the cases. Cases involving larger tracts should require more detailed consideration before disposal.

The road rights-of-way exist as narrow strips of Federal land through private land. Most were created as exceptions to homestead patents in order to provide access to the homesteaded area or to the remaining public lands. Some were purchased by the Government in conjunction with the work of the Civilian Conservation Corps. Many of the roads no longer exist or were never built. The average size of the strips is 2 acres. They occur in the West, especially in Montana, Wyoming, Idaho and Arizona.

We also wish to offer an amendment that would broaden the scope of the bill to include a different type of land transfer. This involves the interchange of land and would be in addition to the bill's provision to sell or exchange certain National Forest System lands. Interchange as proposed here would be a special form of land transfer similar to exchange in which, for example, a landowner who might be involved in an occupancy trespass situation on adjoining Federal lands, could agree with the Federal Government to interchange titles to the small parcel of Federal land being occupied and a similar parcel of private lands which he owns. The simple transaction, with conveyances at approximate value, would clear up the encroachment situation and would avoid the more costly and time consuming process normally associated with exchange. The expense to the landowner would be the cost of survey, if any, and deed preparation and filing. We would envision interchange as a supplement to the regular land exchange process, applicable to some of the cases encompassed by S. 705.

We also propose an amendment that would require the Secretary to consult with the Secretary of the Interior when conveying National Forest System lands under the provisions of this bill that contain leasable minerals in known or designated energy and mineral resource areas.

The Secretary would be directed to issue regulations to implement the bill, including specification of what constitutes the public interest and guidelines relating to disposal of mineral fractions. We recommend this direction be broadened to require a definition of and the process for determining "approximate value."

Section 5 of S. 705 would permit the Secretary of Agriculture to use the provisions of the Act of December 4, 1967, (81 Stat. 531) to carry out exchanges authorized by the bill. This broadening of the 1967 Act is apparently intended to authorize exchanges of National Forest System land with State and local government entities in addition to the present authority for public school districts where cash equalization of payment by the local government is made. The section's intent is not clear and we propose an amendment that more clearly states its desired purpose. The authority provided by this section would not be limited to the specific types of National Forest System lands encompassed by S. 705. All land exchanges with States, counties and municipal governments, in addition to those with public school districts, would be affected by this section. We suggest the section be moved to the end of the bill to indicate this broader applicability.

The bill does not address the question of surveys of the tracts to be conveyed. Surveys of certain National Forest System lands covered by S. 705 would be carried out by the Department of the Interior, Bureau of Land Management. The Department of Agriculture, Forest Service, may perform certain of these surveys through authority delegated by the Bureau in a March 1980 Memorandum of Understanding.

Our recommended amendments are shown in the enclosed supplemental statement.

No additional appropriations would be required to administer the provisions of S. 705 nor would additional personnel be needed.

Honorable Jesse Helms 4

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

John R. Block
Secretary
Enclosure

USDA
SUPPLEMENTAL STATEMENT
S. 160/S. 705

ANALYSIS AND DISCUSSION OF S. 160:

S. 160 would authorize the Secretary of Agriculture to convey under specified conditions certain National Forest System lands to private parties when determined to be in the public interest. Federal lands which would be conveyed are limited to parcels of 5 acres or less which are encroached upon by improvements placed there by private parties who had not received advance notice that the encroachment would occur. Further, the private party's encroachment upon the Federal land was caused by reliance on either an erroneous Federal land survey or an uncertified Federal survey marker. Section 2 of the bill requires that all monuments established through survey of the public lands by the Department of the Interior or an agency designated by that Secretary to make such surveys (which we would interpret to include the Forest Service) be certified within 180 days after monumentation occurs. Certification would involve meeting all requirements and conditions for survey and monumentation and filing appropriate information in the proper land office.

It is our understanding that introduction of S. 160 was prompted by a specific case on the Lincoln National Forest at Cloudcroft, New Mexico. The Bureau of Land Management, acting at the request of the Forest Sevice, began a resurvey of a portion of the National Forest boundary in 1967, established property lines and erected corner monuments to replace those of the public land survey established in the 19th century but not found at the time of resurvey. This survey was temporary in that it was not recorded and the monumentation not certified. Ten years later, the Bureau of Land Management, seeking to complete the 1967 survey, found the original survey monuments which were in a different location than those of the 1967 survey. The Federal surveyors then removed the 1967 survey monuments. In the 1967-1977 period, however, private surveyors used the temporary, uncertified monuments to survey private lands adjoining the National Forest Boundary. These surveys were the basis for subdivision and sale of the private lands. Subsequently, privately owned improvements have been erected on this land which are now considered to be encroaching upon Federal land.

The problem to which the bill is directed is real but of very limited application. There are very few known instances where an incomplete Federal land survey has caused an incorrect private survey and subsequent encroachment upon Federal land. Errors in private surveys which lead to encroachment on Federal land by private landowners are of a far more common occurrence. We estimate that of the 50,000 title claim cases on National Forest System lands, a major portion involve good faith occupancy due to errors in private surveys, land descriptions or titling. S. 705, if amended as we recommend, is directed at this larger problem, and would be of much greater value, we believe. It would encompass the type of situation to which S. 160 is directed. It would enable us to expeditiously resolve, through administrative means, these problems. At present such problems require the issuance of special use permits or private relief legislation. We recommend enactment of S. 705 with our amendments in lieu of S. 160.

RECOMMENDED AMENDMENTS TO S. 705:

1. On page 1, line 8, change the semicolon to a colon and insert the following proviso:

"Provided, That the Secretary shall consult with the Secretary of the Interior prior to conveying leasable minerals in known or designated energy ~~and~~ mineral resource areas;".

2. On page 2, line 18, delete "mineral patents" and insert "lands which have been transferred out of Federal ownership under the mining laws".

3. On page 2, line 20, substitute a semicolon for the comma after "administration" and delete the remainder of clause 1 of section 2. On line 16, after "Secretary", insert ", which have a value as determined by the Secretary of not more than $150,000,".

4. On page 3, line 1, delete "ten" and insert "five".

5. On page 3, line 6, delete "Federal".

6. On page 3, line 17 substitute a period for the comma following "Secretary", delete "except" and insert "The Secretary may,". Move the sentence beginning on line 20 and ending on line 24 to line 17 to follow "Secretary". On line 19 insert a comma after "interest" and delete "to". On line 20 substitute a comma for the period after "person" and insert "or reimbursement for the value of improvements to rights-of-way otherwise required by this section."

7. On page 4, move section 5 to the end of the bill, renumber as section 8, and revise as follows--

"SEC. 8. The Act of December 4, 1967, (81 Stat. 531) is amended by inserting before the phrase 'public school district' wherever it appears, and before the phrase 'public school authority' the second time it appears, the words 'State, county, municipal government or'."

Renumber sections 6, 7, and 8 as sections 5, 6, and 7.

8. On page 4, line 12, insert "(a)" after "Act,", change the period to a comma at the end of the sentence and add the following new subsection:

"(b) the term 'interchange' means a land transfer in which the Secretary may exchange titles with a person to land in their respective ownerships, subject to the discretion of the Secretary under such regulations as the Secretary may prescribe as to appraisal, survey, notice, and other procedures applicable to exchanges."

To insure consistency between this amendment and other provisions of the bill, the following technical changes should be made:

-- On page 1, line 6, insert a comma after "sell", delete "or" and insert "or interchange" after "exchange,".

-- On page 2, line 1, insert a comma after "sold", and on line 2 delete "or" and insert "or interchanged," after "exchanged".

-- On page 2, lines 4-5, delete the words "equal in value to the fair market value of the lands, including the mineral estate sold or exchanged," and insert "which, in the case of conveyance by sale or exchange, is at least equal in value, including the mineral estate, or, in the case of conveyance by interchange, is of approximate value, including the mineral estate, to the land being conveyed". On page 1, line 7 insert", including the mineral estate," after "interest".

-- On page 2, line 14 insert a comma after "sold", delete "or" and insert ", or interchanged" after "exchange". Also on line 14 insert a comma after "sale" and delete "or" the second time it occurs. On line 15 insert ", or interchange" after "exchange".

9. On page 4, line 20 renumber clause (2) as clause (3). On line 19, delete "and" and insert a new clause (2) as follows:

"(2) the definition of and the procedure for determining 'approximate value; and'."

STATEMENT OF
R. MAX PETERSON, CHIEF, FOREST SERVICE,
U. S. DEPARTMENT OF AGRICULTURE

Before the
Subcommittee on Forestry, Water Resources, and Environment
Committee on Agriculture, Nutrition and Forestry
United States Senate

Concerning S. 705

October 22, 1981

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for the opportunity to appear here today and offer the Department of Agriculture's views on S. 705, a bill that would authorize the Secretary to convey certain parcels of National Forest System lands when it is determined to be in the public interest. We strongly urge prompt enactment of S. 705, as it would provide a valuable means to improve the management of the National Forests. We do wish to offer several amendments which we believe would improve the bill. I would point out that an earlier version of the legislation was approved by the Senate in December 1980.

The bill before you is nearly identical to that earlier bill. It would allow the Secretary to either sell or exchange three specific kinds of National Forest System lands: (1) irregularly shaped tracts of 40 acres or less interspersed with or adjacent to mineral patents which have a current fair market value of not more than $150,000; (2) tracts of 10 acres or less encroached upon by improvements owned or occupied by private parties who had no advance notice that they encroached or would encroach upon the Federal lands and who in good faith relied upon an erroneous Federal survey, or an incorrect title search or land description; and (3) rights-of-way, reserved or acquired, substantially surrounded by private land and which are no longer needed by the United States. The bill would prohibit conveyance of any such tracts located within the National Wilderness Preservation System.

The Federal lands would be conveyed by quitclaim deed. The deed would contain terms and conditions necessary to insure protection of the public interest, including public access to the lands of the National Forest System. Payment for these lands would be in lands, interest in lands or cash payment equal to the fair market value of the lands conveyed. Determination of value would include the mineral estate when appropriate.

These small tracts of Federal land are scattered throughout the System. They are typically separate, isolated units having special management problems which make efficient administration difficult. Such problems include occupancy trespass, use as rights-of-way for access or utilities, and use, or sometimes inadvertent sale, by private developers or adjoining owners. Disposal under the conditions of S. 705 would be in the interest in the United States.

The bill would supplement our current authorities to convey National Forest System lands, including the General Exchange Act of 1922. It would allow us to minimize the cost associated with disposal of small tracts of land. Administrative remedies, such as special-use permits, currently used to resolve many of the problems, do not provide a satisfactory long-term solution to either the private landowner or the United States. Individual bills have been enacted in some instances; but, because of the cost and time normally required, it is not a practical or efficient way to resolve a large number of cases. The mineral fractions encompassed by this bill are residual Federal lands that remained after the patenting of mineral claims in the western States over the last century. Because of the manner in which the claims were located, the remaining Federal lands are of an infinite variety of sizes and shapes. Most of the surrounding lands, as well as the fractions themselves, are no longer held

for their mineral values and are of little practical use for National Forest System purposes. Some have been for practical purposes incorporated into adjoining private lands which have been subdivided into vacation homesites, or similar, more intensive land uses. The bill prescribes a 40-acre maximum size for those fractions to be conveyed. We can resolve the mineral fraction problem within this limit. The bill also prescribes a maximum value of $150,000. We believe this limitation should apply as well to the other two types of tracts. We also believe the term "mineral patents" should be clarified to specifically refer to those lands transferred out of Federal ownership under the mining laws.

Our ability to promptly handle cases of encroachment, or good faith trespass, would be aided by S. 705. Encroachment occurs when improvements are constructed or are being used on a parcel of land acquired in good faith by a private party which is later found to be Federal land due to an improper property line survey or an error in the title or land description. The bill would limit these cases of improper surveys to those caused by Federal surveys. We believe this is unnecessarily limiting and would not allow us to deal with cases where erroneous private surveys cause encroachment. Such situations often occur when private lands adjacent to the National Forest are subdivided and sold. Private surveys creating the lot or subdivision may be found to be in error when the Federal land is surveyed and marked.

There are few known instances where a Federal survey has led to encroachment. We estimated a few years ago that there were 50,000 title claim cases existing on National Forest System lands, a major portion of which are believed to be good faith occupancy due to a faulty private survey. These "overlaps" of private onto Federal lands commonly involve less than 1 acre. We recommend

that S. 705 be broadened to include those encroachment cases caused by private surveys. We also believe that such cases coming under the provisions of S. 705 should be limited to a maximum size of 5 acres. This limit would encompass about 95 percent of the cases. Larger tracts should require more detailed consideration.

The road rights-of-way are narrow strips of Federal land or interests in land acquired across private land. Many were created as exceptions to homesteads to provide access to the homesteaded area or assure access to the remaining public lands. Some were purchased by the Government in conjunction with the work of the Civilian Conservation Corps. Many of these roads have long since been abandoned or were never constructed. The land is often "unofficially" incorporated into adjoining ownerships, causing various types of occupancy trespass. Two acres is the average size of the strips. Most of these cases occur in the West, especially in Montana, Wyoming, Idaho, and Arizona. Like the mineral fractions they cannot be effectively administered and should be transferred to private ownership.

In addition to several amendments, we have already discussed we would like to to propose a substantive addition to the bill which we believe would greatly improve our ability to handle the conveyance of these small tracts.

As we evaluated the conveyance process that would be required to implement the provisions of the bill, we saw an opportunity to speed up the process for certain cases. This would involve use of a different type of land transfer which we call an interchange and which would be in addition to the bill's provision to sell or exchange the National Forest System lands. As we envision it, interchange, as would be used in this legislation, would be a special form of conveyance similar to exchange but without the rather elaborate administrative procedures normally associated with formal exchanges. In effect, it is an

expedited form of exchange, and would thus avoid the attendant costs and time requirements. For example, a landowner involved in an encroachment situation on Federal lands could agree with the Government to interchange titles to the small parcel of Federal land being occupied and a similar parcel of land, usually adjacent, which that person owns. Lands involved would normally be of about equal size and approximately equal value. This simple transaction would clear up the encroachment situation quickly and with minimal costs by avoiding the formal appraisal and processing procedures. The expense to the landowner would be limited to the costs of the survey, if any, and deed preparation and filing. Interchange would be a supplement to the regular land exchange process, applicable to some of the cases encompassed by S. 705 and subject to the bill's limitation on those conveyances. We believe it is an appropriate addition to the sale and exchange authority and recommend its inclusion in S. 705.

We also propose an amendment that would require the Secretary to consult with the Secretary of the Interior when conveying National Forest System lands that contain leasable minerals in known or designated energy or mineral resource areas. This amendment is consistent with USDI's authorities regarding dispositi n of subsurface resources.

Section 5 of the bill deals with an amendment that would broaden the provisions of the Act of December 4, 1967 (81 Stat. 531) to include State and local government entities. This law now authorizes the Secetary, when making exchanges of land to public school districts under the General Exchange Act of 1922, to accept cash for a portion or all of the value of the selected Federal property. The section is apparently intended to authorize exchanges with State and local governments that involve cash equalization. We concur with the section but propose an amendment that more clearly states its desired purpose. The authority provided in this section would not be limited to the specific types of National Forest

System lands generally addressed in S. 705. All land exchanges with States, counties, municipal governments and public school districts would be affected by this section. We suggest this section be moved to the end of the bill to help avoid confusion between it and other provisions of the bill.

The amendments I have proposed and others of a lesser nature have been provided to the Committee staff.

To conclude, we strongly support S. 705 and urge prompt Senate action on the bill. It would be an important addition to our authorities to manage the lands of the National Forest System. It would help reduce costs of land conveyances, disputes with adjoining landowners, and possible litigation.

That concludes my prepared statement. I would be pleased to answer the Subcommittee's questions or explain our proposed amendments in greater detail.

Calendar No. 482

97TH CONGRESS, 2d Session } SENATE { REPORT No. 97-332

AUTHORITY TO CONVEY CERTAIN NATIONAL FOREST SYSTEM LANDS

APRIL 19 (legislative day, APRIL 13), 1982.—Ordered to be printed

Mr. HELMS, from the Committee on Agriculture, Nutrition, and Forestry, submitted the following

REPORT

[To accompany S. 705]

The Committee on Agriculture, Nutrition, and Forestry, to which was referred the bill (S. 705) to authorize the Secretary of Agriculture to convey certain National Forest System lands, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

SHORT EXPLANATION

S. 705, as amended, would authorize the Secretary of Agriculture to convey by quitclaim deed certain small parcels of national forest system lands the sale or exchange of which is not practicable under any other authority of the Secretary. The bill would specifically exclude from conveyance under its provisions any lands within the National Wilderness Preservation System. The lands which may be conveyed through sale, exchange, or interchange are (1) parcels of 40 acres or less which are interspersed with or adjacent to mineral patents; (2) parcels of 10 acres or less which are innocently encroached upon by persons who relied in good faith on an erroneous survey or other land description; and (3) road rights-of-way no longer needed by the United States. Parcels that may be conveyed under the bill cannot exceed $150,000 in value. The consideration accepted by the Secretary must be at least equal to the value of any lands being sold or exchanged, or of approximate value to the value of any lands being interchanged by the Secretary.

In addition, the bill would require that persons to whom land is conveyed under this authority bear the costs incident to the conveyance and, in the case of the conveyance of any right-of-way, reimburse the

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United States for the value of any improvements made to the right-of-way by the United States. If determined to be in the public interest the Secretary would have authority to waive such costs and reimbursement. In determining the value of land to be conveyed, the bill would authorize the Secretary to allow credit, if consistent with the public interest, for improvements made to the land by any person other than the United States.

The bill would provide that the use of rights-of-way conveyed under this authority would be controlled by State and local law. The Secretary would be authorized to issue regulations as necessary to carry out the provisions of the act. The bill would also authorize exchanges of national forest system lands with State and local government entities where cash equalization of payment by the State or local government is made.

Committee Amendment

The committee amendment to the text of the bill strikes out all after the enacting clause and inserts a substitute.

As introduced, S. 705 would authorize the Secretary of Agriculture, when in the public interest, to sell or exchange, by quitclaim deed, all right, title, and interest of the United States in certain national forest system lands (specifically excluding any lands within the National Wilderness Preservation System), as follows: (1) parcels of 40 acres or less interspersed with or adjacent to mineral patents, which the Secretary determines are not subject to efficient administration, and which have a fair market value of not more than $150,000; (2) parcels of 10 acres or less that are encroached upon by improvements occupied or used by persons who in good faith, and without advance notice that the improvement would encroach upon the parcel, relied upon an erroneous Federal survey, title search, or other land description; and (3) road rights-of-way that are substantially surrounded by lands not owned by the United States and that are no longer needed. As consideration for such lands the Secretary could accept other land, interests in lands, or cash, equal in value to the fair market value of the land.

In addition, the bill as introduced would require that persons receiving any land bear reasonable costs incident to such conveyance, except that the Secretary could waive these costs if in the public interest. Persons to whom any rights-of-way are conveyed must reimburse the United States for the value of any improvements thereon, and any such conveyance would not permit the use of any right-of-way in a manner inconsistent with State or local law. The Secretary would be authorized to issue necessary regulations. The current authority to allow cash equalization of payment in an exchange of national forest system lands with a school district would be extended to include State and local government entities.

The committee amendment to S. 705—

(1) Moves the definitions to the first section and adds definitions of the terms "interchange" and "Secretary";

(2) Deletes the requirement that the Secretary insert various terms and conditions in the deeds of land conveyed;

(3) Adds a new category of land transfer—an "interchange"—which in essence is a simplified form of exchange that would involve the use of procedures, such as the use of approximate

values rather than exact appraised values, designed to reduce the time and cost of completing the land transfer;

(4) Extends the $150,000 limitation applicable to mineral fractions, to all tracts covered by the bill;

(5) Extends to provision allowing the conveyance of parcels up to 10 acres where encroachment has resulted from good faith reliance on erroneous Federal surveys to include erroneous non-Federal surveys.

(6) With respect to determining the value of parcels to be conveyed, adds a provision to grant the Secretary discretion to allow credit for the value of any improvements to the land made by any person other than the government;

(7) With respect to the conveyance of rights-of-way, adds authority for the Secretary to waive reimbursement for improvements made to the rights-of-way by the United States, if determined to be consistent with the public interest;

(8) Adds a requirement to define by regulation the meaning of "approximate value"; and

(9) Rephrases the amendment to the Act of December 4, 1967, to clarify that exchanges of National Forest System land where cash equalization of payment is made are authorized with State and local government entities as well as with public school districts.

Purpose and Need

There are an estimated 200,000 tracts of Federal land the size, shape, or location of which makes them impracticable to administer efficiently as units of the national forest system. They are often isolated or too small to justify the expense and time required in land management activities. They may be occupied in trespass by adjoining landowners. These tracts can generally be grouped into one of three readily defined categories: (1) irregularly shaped tracts of 40 acres or less that are interspersed with or adjacent to mineral claims, (2) tracts of 10 acres or less that are encroached upon by private parties because of surveying, titling, or land description errors, or (3) road rights-of-way that are owned by the United States but are no longer needed. Each type of tract is more specifically described below.

Mineral tracts.—The mineral fractions were created 75 to 100 years ago through patenting of mining claims on the Western public lands. Because of the way of claiming occurred, the residual tracts owned by the Federal Government are of an infinite variety of sizes and shapes. Some may be as small as 0.2 acre. Many of the intermingled, unpatented public lands came under the administrative responsibility of the Forest Service upon creation of the national forests but are of such small size or are located in such a way as to be of little practical use for National Forest System purposes.

Most of the adioining mineral patents are no longer held for their mineral values. They may support ranching, industrial plants, irrigation sites and water power facilities, utility lines, roads, and intensive recreation sites. Recently, some of the patented lands have been subdivided into vacation homesites.

Encroachment.—Innocent occupancy, or encroachment, upon national forest system lands occurs when improvements are constructed

or are being used on a parcel of land acquired in good faith by a private party which is later found to overlap Federal land. This usually happens as a result of an improper property line survey, by either private or public surveyors, or an error in the title or land discreption. While there are a few known instances where Federal survey errors are the cause of such encroachments, the great bulk of the title claim cases existing on national forest system lands involves problems resulting from private surveys. The error giving rise to the encroachment is frequently not discovered until the public land is later surveyed and marked. The resulting trespass is considered to be in good faith if the private party had no knowledge that the improvements would encroach upon the Federal lands. The claims generally involve parcels of small size, frequently less than one acre, but constitute a major portion of the estimated 50,000 title claim cases existing on national forest system lands throughout the United States. There would be a distinct advantage to the Government to have the possibility of litigation removed from these potential title claim cases.

Road right-of-way.—These are narrow strips of Federal lands that pass through private land. Most were created as exceptions to homestead patents in order to provide access to the homesteaded area or to remaining Federal lands. Some were purchased by the Government in conjunction with the work of the Civilian Conservation Corps. Many of the roads no longer exist or were never built, and the rights-of-way are no longer needed for national forest system purposes. The average size of these rights-of-way is two acres. They occur in the West, especially in Montana, Wyoming, Idaho, and Arizona.

These three types of small, irregularly shaped tracts of national forest system land create problems for both the Federal land manager and adjacent private property owners. Administrative remedies, while generally applicable, are not in most cases a desirable solution. A special use permit may be granted. The permit acknowledges the occupancy and allows it to continue for a specified period. This period is usually sufficient only to amortize any improvements to the property. The permit is then cancelled and the improvements must be removed. A land exchange may also be made under which the Secretary may accept lands in exchange for the small tracts of the type described above. However, individual exchanges under current authority are lengthy and expensive. They are not usually satisfactory in the case of small acreages and irregularly shaped tracts.

Private legislation has been successful in only a small number of cases. It is a difficult, time-consuming and costly process with uncertain results. A general legislative solution is thus considered preferable and appears to be the only realistic solution to the massive backlog of these types of title claim cases. S. 705, as amended would provide the Forest Service with authority to administer an efficient system for resolving these claims in a manner consistent with protecting the public interest.

The proposed legislation would also address a different, but related, matter involving national forest system lands. The act of December 4, 1967, authorizes exchanges of national forest system lands with public school districts where the lands offered in exchange do not equal the value of the Federal lands. In such cases, the act authorizes the

Secretary to accept cash from the public school district to equalize the value of the exchange. Broadening this cash equalization feature to include State, county, and municipal governments would recognize that these entities may have the same difficulty in making equivalent land exchanges as do public school districts and would allow for the completion of desirable land exchanges where sufficient suitable land is not available. In addition to specifically indentified land exchanges, there are approximately 10,000 cases where these governmental units occupy a tract of national forest system land under a special use permit in order to carry out a specific function, such as highway maintenance facilities or forest fire lookout towers. Many of these could appropriately be transferred to the local governmental unit under a cash equalization exchange program.

Committee Consideration

A. HEARINGS

The Subcommittee on Forestry, Water Resources, and Environment, chaired by Senator Hayakawa, held a hearing on S. 705 on October 22, 1981.

Senator Domenici, the sponsor of S. 705, as well as representatives of the forestry industry, the U.S. Department of Agriculture, and landowners testified.

Senator Domenici testified that the U.S. Forest Service is currently involved in thousands of boundary disputes with private landowners. The disputes have come about due to a variety of reasons, including mistakes by Federal agencies, technological advances in equipment, and methods of conducting land surveys. He indicated that many of the landowners, especially those in New Mexico, have purchased land in good faith only to find that the Federal Government now lays claim to some of that land. He further testified that the overwhelming number of these claim cases involve disputes of land parcels less than 10 acres in size and that S. 705 would provide the Forest Service with the flexibility to handle these small boundary diputes.

The Chief of the Forest Service testified that the Department of Agriculture supports the bill but recommended that various amendments be incorporated in it for clarification of certain provisions and to provide additional authority and limitations in connection with the authorized land conveyances.

Other witnesses testified to the effect that while existing legislation outlines the steps necessary to execute public land transfers to States, municipalities, and private individuals, the current law does not sufficiently address the growing problem of small land tract disputes.

Several examples of these situations were described with the need to seek enactment of private relief bills being cited as the only existing alternative to the current administrative authority. Some witnesses indicated support for the adoption of S. 705 and characterized it as presenting an important addition to current authority for the Forest Service. One witness also proposed several amendments to the bill which were described as technical and clarifying in nature.

B. SUBCOMMITTEE ACTION

Following the hearings a subcommittee print of S. 705 was prepared incorporating many of the amendments proposed by the Department of Agriculture and another witness. The subcommittee print was considered by the members of the Subcommittee on Forestry, Water Resources, and Environment and the bill as amended was reported to the full committee.

C. COMMITTEE MARKUP

On March 31, 1982, the full committee met in open session and considered S. 705, as amended, by the subcommittee.

At Chairman Helms' request the provisions of the subcommittee print were explained to the committee members. In addition, a technical amendment to the print was described. As reported by the subcommittee the bill would authorize the Secretary of Agriculture, in determining the value of any land to be conveyed under the act, to exclude the value of improvements made to the land by the person to whom the land is to be conveyed. The amendment would expand that provision to authorize the Secretary to take into consideration, when making such a determination, the value of improvements to the land by any person other than the Government.

Senator Hayakawa, chairman of the subcommittee that reported the bill, indicated his support for the amendment. The amendment was adopted without objection.

With a majority of the members present, the committee then unanimously agreed by voice vote to report S. 705, as amended, to the Senate.

Section-by-Section Analysis

Section 1 defines the terms "person", "interchange", and "Secretary". The term "person" includes States or any political subdivisions or entities thereof, such as county and municipal governments, independent school districts and similar entities. The term "interchange" means a land transfer involving the change of titles to or interests in lands between the Secretary and another person under such regulations as the Secretary may prescribe.

Section 2 authorizes the Secretary of Agriculture, when in the public interest, to sell, exchange, or interchange by quitclaim deed, all right, title, and interest, including the mineral estate, of the United States in the national forest system lands described in section 3. As consideration for such lands the Secretary is authorized to accept other lands, interests in lands, or cash, or any combination thereof, which in the case of a sale or exchange is at least equal in value to the lands being conveyed by the Secretary. In the case of conveyance by interchange the consideration must be of approximate value to the lands being conveyed by the Secretary.

Section 3 identifies the lands which may be sold, exchanged, or interchanged by the Secretary under section 2 as those the sale or exchange of which is not practicable under any other authority of the Secretary, which the Secretary has determined to have a value of not more than $150,000, and which are (1) parcels of 40 acres or less interspersed with or adjacent to mineral patents and which the Sec-

retary has determined, because of size and location, are not subject to efficient administration; (2) parcels of 10 acres or less which are encroached upon by improvements occupied or used under claim or color of title by persons to whom no advance notice was given that the improvements encroached or would encroach upon such parcels, and who in good faith relied upon an erroneous survey, title search, or other land description indicating that there was no such encroachment; or (3) road rights-to-way reserved or acquired which are substantially surrounded by lands not owned by the United States and which are no longer needed by the United States subject to the first right of abutting landowners to acquire the rights-of-way.

Section 4 requires that persons to whom land is conveyed must bear all reasonable costs, as determined by the Secretary, of administration, survey, and appraisal incidental to the conveyance. In addition, any person to whom a right-of-way is conveyed is required to reimburse the United States for the value of any improvements to the right-of-way made by the United States. In cases where the Secretary determines it would be consistent with the public interest to do so, the Secretary is authorized to waive payment of such incidental costs or reimbursement for such improvements to rights-of-way. This section also provides that, in determining the value of any lands or interest in lands to be conveyed, the Secretary may exclude from such determination the value of any improvements to the lands made by persons other than the Government, when the Secretary determines that such exclusion would be consistent with the public interest.

Section 5 provides that conveyance of any road rights-of-ways shall not be construed as permitting any designation, maintenance, or use of the rights-of-way for road or other purposes except to the extent permitted by State or local law.

Section 6 directs the Secretary to issue regulations to carry out the provisions of the bill, including specification of: (1) the criteria to be used in determining what constitutes the public interest; (2) the definition of and the procedure for determining "approximate value"; and (3) factors relating to location or size to be considered in determining the lands interspersed with mineral patents that are eligible to be conveyed under the bill.

Section 7 provides that nothing in the bill shall authorize conveyance of Federal lands within the National Wilderness Preservation System.

Section 8 amends the act of December 4, 1967, to authorize the Secretary to accept cash equalization payments, in connection with exchanges of national forest system lands, by State, county, or municipal governments where the lands offered in exchange do not equal the value of the Federal lands. Presently, that act only authorizes cash equalization payments in connection with exchanges with public school districts.

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the committee makes the following evaluation of the regulatory impact that would be incurred in carrying out S. 705, as amended.

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I.

S. 705 is not a regulatory measure in the sense of imposing Government established standards or significant economic responsibilities on private individuals and businesses. Conveyance of Government land to private parties, or to State, county, or municipal governments under the legislation would be voluntary. Furthermore, there would be significant advantages expected to accrue to the private entities affected by the legislation in providing for the resolution of title claims through expedited administrative actions rather than through litigation or private relief legislation. Upon adoption of regulations by the Secretary establishing the procedures to be followed in making conveyances, the affected private entities would be free to choose whether or not to enter into a sale, exchange, or interchange with the Secretary.

II.

Enactment of the bill would not affect the personal privacy of persons acquiring the national forest system lands.

III.

Additional Federal paperwork would result from enactment of the bill; however, the direct increase is not expected to be large and may be partially or wholly offset by indirect paperwork reductions. Administrative procedures to govern the application of the bill's provisions would be prepared to guide Department personnel. New regulations to implement the administrative procedures authorized by the bill would be required. Each conveyance would require the preparation of necessary legal papers to effect the transfer of ownership. On the other hand, enactment of the bill is anticipated to have the indirect effect of decreasing paperwork that would be required in connection with the administration of these lands if they were to remain in Federal ownership and reducing the number of claims to be resolved through formal dispute procedures and court litigation.

ADMINISTRATION VIEWS

In a letter to Chairman Helms, dated October 21, 1981, from John R. Block, Secretary, U.S. Department of Agriculture, the Secretary recommended adoption of S. 705 by the committee with certain amendments. The Secretary's letter reads as follows:

DEPARTMENT OF AGRICULTURE,
Washington, D.C., October 21, 1981.

Hon. JESSE HELMS,
Chairman, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: As you requested, here is our report on S. 705, a bill to authorize the Secretary of Agriculture to convey certain National Forest System land, and for other purposes, and on S. 160, a bill to authorize the Secretary of Agriculture to convey certain National Forest System lands, under specified conditions, to direct the

Secretary of the Interior to certify survey monuments within one hundred and eighty days, and for other purposes.

The Department of Agriculture recommends that S. 705 be enacted with our proposed amendments in lieu of S. 160.

S. 705 would authorize the Secretary of Agriculture to sell or exchange certain National Forest System lands at fair market value when the Secretary determines it to be in the public interest. A quitclaim deed would convey the land sold or exchanged and would contain terms, covenants, conditions and reservations necessary to protect the public interest, including public access to other National Forest System lands. Any conveyance could be made to a State or political subdivision of a State as well as to private parties.

The lands which would be sold or exchanged are of three types: (1) tracts of 40 acres or less interspersed with or adjacent to patented mineral claims which cannot be efficiently administered and which have a fair market value of not more than $150,000; (2) parcels of 10 acres or less which are encroached upon by improvements occupied or used by persons who relied upon an erroneous Federal survey, title search or land description and who had not been given advance notice that their improvements would encroach upon the Federal land; or (3) road rights-of-way, either reserved or acquired, substantially surrounded by privately owned lands and which are no longer needed by the United States.

S. 705 would require persons receiving these lands to bear the costs of conveyance unless waived by the Secretary. Conveyance of road rights-of-way would require reimbursement to the United States by the recipient for the value of any improvements. The abutting landowners would be given the first opportunity to acquire the road rights-of-way. The bill would prohibit conveyance of any Federal lands within the National Wilderness Preservation System.

S. 160 is a more limited bill and would only address a small part of the concerns on which S. 705 is based. We have included, as part of our supplemental statement, a detailed analysis of S. 160 and our reasons for supporting S. 705 with amendments rather than S. 160.

S. 705 would provide authority to convey three types of small, irregularly shaped tracts of National Forest System land. These are typically separate, isolated units having special management problems which impair efficient administration. Present authorities, including the General Exchange Act of March 20, 1922, are not adequate to handle the unique nature of these tracts. Administrative remedies, such as special use permits, do not provide a satisfactory long-term solution. S. 705, with the amendments we recommended, would provide authority to more efficiently administer National Forest System lands.

The mineral fractions are residual Federal lands remaining after the patenting of mineral claims in the western States over the last century. Due to the manner in which the claiming occurred, the residual lands are of an infinite variety of sizes and shapes. Many of these lands came under the administrative responsibility of the Forest Service upon creation of the National Forests. Most of these lands are no longer held for their mineral values and are of little practical use for National Forest System purposes. We believe that the $150,000 limitation imposed by S. 705 should apply not only to mineral frac-

tions but to the other two types of tracts as well. We also believe the term "mineral patents" should be clarified to refer to those lands transferred out of Federal ownership under the mining laws.

Encroachment, or good faith trespass, upon National Forest System land occurs when improvements are constructed or are being used on a parcel of land acquired in good faith by a private party but which is later found to overlap Federal land. This overlap may occur due to an improper property line survey or an error in the title or land description. This has happened when private lands adjoining public lands are subdivided and sold. The trespass would be considered good faith if the private party had no knowledge that the improvements would encroach upon the Federal lands. The bill would limit these cases to those caused by erroneous Federal surveys. We believe this is unnecessarily limiting and would not allow us to deal with cases where erroneous private surveys cause encroachment. There are few known instances where a Federal survey error led to encroachment. On the other hand, there are an estimated 50,000 title claim cases existing on National Forest System lands—a large number of which involve good faith trespass due to faulty private surveys. These occur throughout the United States. These are generally of small size, most involve less than 1 acre. We recommend that S. 705 be broadened to include encroachment cases that occur as a result of private surveys. We believe that such cases should be limited to a maximum size of 5 acres. This limit would encompass about 95 percent of the cases. Cases involving larger tracts should require more detailed consideration before disposal.

The road rights-of-way exist as narrow strips of Federal land through private land. Most were created as exceptions to homestead patents in order to provide access to the homesteaded area or to the remaining public lands. Some were purchased by the Government in conjunction with the work of the Civilian Conservation Corps. Many of the roads no longer exist or were never built. The average size of the strips is 2 acres. They occur in the West, especially in Montana, Wyoming, Idaho and Arizona.

We also wish to offer an amendment that would broaden the scope of the bill to include a different type of land transfer. This involves the interchange of land and would be in addition to the bill's provision to sell or exchange certain National Forest System lands. Interchange as proposed here would be a special form of land transfer similar to exchange in which, for example, a landowner who might be involved in an occupancy trespass situation on adjoining Federal lands, could agree with the Federal Government to interchange titles to the small parcel of Federal land being occupied and a similar parcel of private lands which he owns. The simple transaction, with conveyances at approximate value, would clear up the encroachment situation and would avoid the more costly and time consuming process normally associated with exchange. The expense to the landowner would be the cost of survey, if any, and deed preparation and filing. We would envision interchange as a supplement to the regular land exchange process, applicable to some of the cases encompassed by S. 705.

We also propose an amendment that would require the Secretary to consult with the Secretary of the Interior when conveying National Forest System lands under the provisions of this bill that contain

leasable minerals in known or designated energy and mineral resource areas.

The Secretary would be directed to issue regulations to implement the bill, including specification of what constitutes the public interest and guidelines relating to disposal of mineral fractions. We recommend this direction be broadened to require a definition of and the process for determining "approximate value."

Section 5 of S. 705 would permit the Secretary of Agriculture to use the provisions of the Act of December 4, 1976, (81 Stat. 531) to carry out exchanges authorized by the bill. This broadening of the 1967 Act is apparently intended to authorize exchanges of National Forest System land with State and local government entities in addition to the present authority for public school districts where cash equalization of payment by the local government is made. The section's intent is not clear and we propose an amendment that more clearly states its desired purpose. The authority provided by this section would not be limited to the specific types of National Forest System lands encompassed by S. 705. All land exchanges with States, counties and municipal governments, in addition to those with public school districts, would be affected by this section. We suggest the section be moved to the end of the bill to indicate this broader applicability.

The bill does not address the question of surveys of the tracts to be conveyed. Surveys of certain National Forest System lands covered by S. 705 would be carried out by the Department of the Interior, Bureau of Land Management. The Department of Agriculture, Forest Service, may perform certain of these surveys through authority delegated by the Bureau in a March 1980 Memorandum of Understanding.

Our recommended amendments are shown in the enclosed supplemental statement.

No additional appropriations would be required to administer the provisions of S. 705 nor would additional personnel be needed.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

JOHN R. BLOCK,
Secretary.

Enclosure.

USDA SUPPLEMENTAL STATEMENT, S. 160/S. 705

ANALYSIS AND DISCUSSION OF S. 160

S. 160 would authorize the Secretary of Agriculture to convey under specified conditions certain National Forest System lands to private parties when determined to be in the public interest. Federal lands which would be conveyed are limited to parcels of 5 acres or less which are encroached upon by improvements placed there by private parties who had not received advance notice that the encroachment would occur. Further, the private party's encroachment upon the Federal land was caused by reliance on either an erroneous Federal land survey or an uncertified Federal survey marker. Section 2 of the bill requires that all monuments established through survey of

the public lands by the Department of the Interior or an agency designated by that Secretary to make such surveys (which we would interpret to include the Forest Service) be certified within 180 days after monumentation occurs. Certification would involve meeting all requirements and conditions for survey and monumentation and filing appropriate information in the proper land office.

It is our understanding that introduction of S. 160 was prompted by a specific case on the Lincoln National Forest at Cloudcroft, New Mexico. The Bureau of Land Management, acting at the request of the Forest Service, began a resurvey of a portion of the National Forest boundary in 1967, established property lines and erected corner monuments to replace those of the public land survey established in the 19th century but not found at the time of resurvey. This survey was temporary in that it was not recorded and the monumentation not certified. Ten years later, the Bureau of Land Management, seeking to complete the 1967 survey, found the original survey monuments which were in a different location than those of the 1967 survey. The Federal surveyors then removed the 1967 survey monuments. In the 1967–1977 period, however, private surveyors used the temporary, uncertified monuments to survey private lands adjoining the National Forest Boundary. These surveys were the basis for subdivision and sale of the private lands. Subsequently, privately owned improvements have been erected on this land which are now considered to be encroaching upon Federal land.

The problem to which the bill is directed is real but of very limited application. There are very few known instances where an incomplete Federal land survey has caused an incorrect private survey and subsequent encroachment upon Federal land. Errors in private surveys which lead to encroachment on Federal land by private landowners are of a far more common occurrence. We estimate that of the 50,000 title claim cases on National Forest System lands, a major portion involve good faith occupancy due to errors in private surveys, land descriptions or titling. S. 705, if amended as we recommend, is directed at this larger problem, and would be of much greater value, we believe. It would encompass the type of situation to which S. 160 is directed. It would enable us to expeditiously resolve, through administrative means, these problems. At present such problems require the issuance of special use permits or private relief legislation. We recommend enactment of S. 705 with our amendments in lieu of S. 160.

RECOMMENDED AMENDMENTS TO S. 705

1. On page 1, line 8, change the semicolon and insert the following proviso:

"*Provided*, That the Secretary shall consult with the Secretary of the Interior prior to conveying leasable minerals in known or designated energy and mineral resource areas;".

2. On page 2, line 18, delete "mineral patents" and insert "lands which have been transferred out of Federal ownership under the mining laws".

3. On page 2, line 20, substitute a semicolon for the comma after "administration" and delete the remainder of clause 1 of section 2. On line 16, after "Secretary", insert ", which have a value as determined by the Secretary of not more than $150,000,".

4. On page 3, line 1, delete "ten" and insert "five".

5. On page 3, line 6, delete "Federal".

6. On page 3, line 17 substitute a period for the comma following "Secretary", delete "except" and insert "The Secretary may,". Move the sentence beginning on line 20 and ending on line 24 to line 17 to follow "Secretary". On line 19 insert a comma after "interest" and delete "to". On line 20 substitute a comma for the period after "person" and insert "or reimbursement for the value of improvements to rights-of-way otherwise required by this section."

7. On page 4, move section 5 to the end of the bill, renumber as section 8, and revise as follows—

"SEC. 8. The Act of December 4, 1967, (81 Stat. 531) is amended by inserting before the phrase 'public school district' wherever it appears, and before the phrase 'public school authority' the second time it appears, the words 'State, county, municipal government or'."

Renumber sections 6, 7, and 8 as sections 5, 6, and 7.

8. On page 4, line 12, insert "(a)" after "Act,", change the period to a comma at the end of the sentence and add the following new subsection:

"(b) the term 'interchange' means a land transfer in which the Secretary may exchange titles with a period to land in their respective ownerships, subject to the discretion of the Secretary under such regulations as the Secretary may prescribe as to appraisal, survey, notice, and other procedures applicable to exchanges."

To insure consistency between this amendment and other provisions of the bill, the following technical changes should be made:

—On page 1, line 6, insert a comma after "sell", delete "or" and insert "or interchange" after "exchange,".

—On page 2, line 1, insert a comma after "sold", and on line 2 delete "or" and insert "or interchanged," after exchanged".

—On page 2, lines 4–5, delete the words "equal in value to the fair market value of the lands including the mineral estate sold or exchanged," and insert "which, in the case of conveyance by sale or exchange, is at least equal in value, including the mineral estate, or, in the case of conveyance by interchange, is of approximate value, including the mineral estate, to the land being conveyed". On page 1, line 7 insert ", including the mineral estate," after "interest".

—On page 2, line 14 insert a comma after "sold", delete "or" and insert ", or interchanged" after "exchange". Also on line 14 insert a comma after "sale" and delete "or" the second time it occurs. On line 15 insert ", or interchange" after "exchange".

9. On page 4, line 20 renumber clause (2) as clause (3). On line 19, delete "and" and insert a new clause (2) as follows:

"(2) the definition of and the procedure for determining 'approximate value; and'."

Cost Estimate

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee estimates there would be no cost to the Government as a result of the enactment of S. 705. In accordance with the Congressional Budget Act of 1974, the Congressional Budget Office prepared the following cost estimate:

U.S. Congress,
Congressional Budget Office,
Washington, D.C., April 13, 1982.

Hon. Jesse A. Helms,
Chairman, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 705, a bill to authorize the Secretary of Agriculture to convey certain National Forest System lands, and for other purposes, as ordered reported by the Senate Committee on Agriculture, Nutrition, and Forestry, March 31, 1982.

This bill authorizes the Secretary of Agriculture to sell, exchange, or interchange certain small parcels of National Forest Service land. The lands involved include parcels valued at a maximum of $150,000 which are: forty acres or less and are inefficient to manage because of location or size: ten acres or less and have been innocently encroached upon due to erroneous non-federal surveys; and unnecessary federally reserved rights-of-way surrounded by non-federal lands. Based on information from the National Forest Service, it is estimated that the value of the lands that will be sold or exchanged by the end of fiscal year 1986 is approximately $1.9 million (in current prices). Assuming the transactions will occur over the next five years and that 90 percent of these transactions are land sales (and 10 percent are land exchanges), receipts to the federal government resulting from enactment of this legislation will be approximately $0.2 million in fiscal year 1982, $0,3 million in fiscal year 1983, $0.6 million in fiscal year 1984, $0.6 million in fiscal year 1985, and $0.7 million in fiscal year 1986.

The bill also authorizes states, counties, and municipal governments to equalize land values with cash for proposed land exchanges with the Secretary of Agriculture where the parcels involved do not exceed eighty acres. Based on information from the National Park Service, net receipts to the federal government that will be realized as a result of enactment of this title will be less than $0.5 million per year.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

Raymond Scheppach
(For Alice M. Rivlin).

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Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman) :

Act of December 4, 1967

AN ACT To facilitate exchanges of land under the Act of March 20, 1922 (42 Stat. 465), for use for public schools, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever an exchange of land is proposed by a *State*, *county*, *or municipal government or* public school district or other public school authority under the Act of March 20, 1922 (42 Stat. 465), as amended (16 U.S.C. 485, 486), or other authority under which the Secretary of Agriculture is authorized to exchange national forest lands or other lands administered by the Forest Service, if the *State*, *county*, *or municipal government or* public school authority proposing the exchange has insufficient land to offer, the exchange may be completed upon deposit with the Secretary of Agriculture of a portion or all of the value of the selected land. Any amount so deposited shall be covered into a special fund in the Treasury which when appropriated shall be available until expended by the Secretary of Agriculture for the acquisition of lands in the same State as the selected lands and which are determined by him to be suitable for the same purposes as the selected lands. Lands so acquired shall have the same status and shall be subject to the same laws, regulations, and rules as the selected lands.

The provisions of this Act shall not be applicable to the conveyance in exchange of more than eighty acres to any one *State*, *county*, *or municipal government or* public school district or other public school authority.

○

Calendar No. 482

97TH CONGRESS
2D SESSION

S. 705

[Report No. 97–332]

To authorize the Secretary of Agriculture to convey certain National Forest System lands, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 12 (legislative day, FEBRUARY 16), 1981

Mr. DOMENICI (for himself, Mr. HATFIELD, and Mr. GARN) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

APRIL 19 (legislative day, APRIL 13), 1982

Reported by Mr. HELMS, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To authorize the Secretary of Agriculture to convey certain National Forest System lands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, ~~That the Secretary of Agriculture (hereinafter referred to as the "Secretary") is authorized, when the Secretary determines it to be in the public interest—~~

~~(1) to sell or exchange, by quitclaim deed, all right, title and interest of the United States in and to National Forest System lands described in section 2; and~~

~~(2) to accept, as consideration for the lands sold or exchanged, other lands, interests in lands, or cash payment, or any combination of such forms of consideration, equal in value to the fair market value of the lands, including the mineral estate, sold or exchanged by the Secretary.~~

~~The Secretary shall insert in any such quitclaim deed such terms, covenants, conditions, and reservations as the Secretary deems necessary to ensure protection of the public interest, including protection of the scenic, wildlife and wilderness values of the National Forest System and provision for appropriate public access to and use of lands within the System.~~

~~SEC. 2. The National Forest System lands which may be sold or exchanged under this Act are those the sale or exchange of which is not practicable under any other authority of the Secretary and which are—~~

~~(1) parcels of forty acres or less which are interspersed with or adjacent to mineral patents, which are determined by the Secretary, because of location or size, not to be subject to efficient administration, and which have a fair market value, as determined by the~~

~~Secretary through appraisal within one year before or after the date application for sale or exchange is made to the Secretary, of not more than $150,000;~~

~~(2) parcels of ten acres or less which are encroached upon by improvements occupied or used under claim or color of title by persons to whom no advance notice was given that the improvements encroached or would encroach upon such parcels, and who in good faith relied upon an erroneous Federal survey, title search or other land description indicating that there was not such encroachment; and~~

~~(3) road rights-of-way, reserved or acquired, which are substantially surrounded by lands not owned by the United States and which are no longer needed by the United States, subject to the first right of abutting landowners to acquire such rights-of-way.~~

~~SEC. 3. Any person to whom lands are conveyed pursuant to this Act shall bear all reasonable costs of administration, survey and appraisal incidental to such conveyance, as determined by the Secretary, except in those cases in which the Secretary determines that it would be consistent with the public interest to waive payment of such costs by such person. In the case of road rights-of-way conveyed pursuant to this Act, the person to whom the right-of-way is conveyed shall reimburse the United States for the value of any im-~~

provements to such right-of-way which may have been made by the United States.

SEC. 4. Conveyance of any road rights-of-way under this Act shall not be construed as permitting any designation, maintenance, or use of such rights-of-way for road or other purposes except to the extent permitted by State or local law and under conditions imposed by such law.

SEC. 5. In carrying out the land exchanges authorized in this Act the Secretary is authorized to use the procedures of the Act entitled "An Act to facilitate exchanges of land under the Act of March 20, 1922 (42 Stat. 465), for use for public schools, and for other purposes", approved December 4, 1967 (Public Law 90-171; 81 Stat. 531).

SEC. 6. For purposes of this Act, the word "person" includes any State or any political subdivision or entity thereof.

SEC. 7. The Secretary shall issue regulations to carry out the provisions of this Act, including specification of—

(1) criteria which shall be used in making the determination as to what constitutes the public interest; and

(2) factors relating to location or size which shall be considered in connection with determining the lands to be sold or exchanged under clause (1) of section 2.

~~SEC. 8. Nothing in this Act shall authorize conveyance of Federal lands within the National Wilderness Preservation System.~~

That for purposes of this Act—

(1) the term "person" includes any State or any political subdivision or entity thereof;

(2) the term "interchange" means a land transfer in which the Secretary and another person exchange titles to lands or interests in lands under such regulations as the Secretary may prescribe; and

(3) the term "Secretary" means the Secretary of Agriculture of the United States.

SEC. 2. The Secretary is authorized, when the Secretary determines it to be in the public interest—

(1) to sell, exchange, or interchange by quitclaim deed, all right, title, and interest, including the mineral estate, of the United States in and to National Forest System lands described in section 3; and

(2) to accept as consideration for the lands sold, exchanged, or interchanged other lands, interests in lands, or cash payment, or any combination of such forms of consideration, which, in the case of conveyance by sale or exchange, is at least equal in value, including the mineral estate, or, in the case of conveyance by interchange, is of approximate value, including

the mineral estate, to the lands being conveyed by the Secretary.

SEC. 3. The National Forest System lands which may be sold, exchanged, or interchanged under this Act are those the sale or exchange of which is not practicable under any other authority of the Secretary, which have a value as determined by the Secretary of not more than $150,000, and which are—

(1) parcels of forty acres or less which are interspersed with or adjacent to lands which have been transferred out of Federal ownership under the mining laws and which are determined by the Secretary, because of location or size, not to be subject to efficient administration;

(2) parcels of ten acres or less which are encroached upon by improvements occupied or used under claim or color of title by persons to whom no advance notice was given that the improvements encroached or would encroach upon such parcels, and who in good faith relied upon an erroneous survey, title search, or other land description indicating that there was not such encroachment; or

(3) road rights-of-way, reserved or acquired, which are substantially surrounded by lands not owned by the United States and which are no longer needed

by the United States, subject to the first right of abutting landowners to acquire such rights-of-way.

SEC. 4. Any person to whom lands are conveyed under this Act shall bear all reasonable costs of administration, survey, and appraisal incidental to such conveyance, as determined by the Secretary. In determining the value of any lands or interest in lands to be conveyed under this Act, the Secretary may, in those cases in which the Secretary determines it would be consistent with the public interest, exclude from such determination the value of any improvements to the lands made by any person other than the Government. In the case of road rights-of-way conveyed under this Act, the person to whom the right-of-way is conveyed shall reimburse the United States for the value of any improvements to such right-of-way which may have been made by the United States. The Secretary may, in those cases in which the Secretary determines that it would be consistent with the public interest, waive payment by any person of costs incidental to such conveyance or reimbursement by any person for the value of improvements to rights-of-way otherwise required by this section.

SEC. 5. Conveyance of any road rights-of-way under this Act shall not be construed as permitting any designation, maintenance, or use of such rights-of-way for road or other

purposes except to the extent permitted by State or local law and under conditions imposed by such law.

SEC. 6. The Secretary shall issue regulations to carry out the provisions of this Act, including specification of—

(1) criteria which shall be used in making the determination as to what constitutes the public interest;

(2) the definition of and the procedure for determining "approximate value"; and

(3) factors relating to location or size which shall be considered in connection with determining the lands to be sold, exchanged, or interchanged under clause (1) of section 3.

SEC. 7. Nothing in this Act shall authorize conveyance of Federal lands within the National Wilderness Preservation System.

SEC. 8. The Act of December 4, 1967 (81 Stat. 531), is amended by inserting before the phrase "public school district" wherever it appears, and before the phrase "public school authority" the second time it appears, the words "State, county, or municipal government or".

HOUSE AGRICULTURE COMMITTEE:

- USDA Report to Committee on H.R. 3021
- USDA Testimony before Subcommittee by Raymond M. Housley
- Committee Report on H.R. 3021
- H.R. 3021 as Amended and Reported by Committee

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

JUN [illegible]01

Honorable E. de la Garza
Chairman, Committee on Agriculture
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Here is our report on H.R. 3021, a bill "To authorize the Secretary of Agriculture to convey certain National Forest System lands, and for other purposes."

The Department of Agriculture recommends that H.R. 3021 be enacted, if amended as recommended herein.

This bill would authorize the Secretary of Agriculture to sell or exchange certain National Forest System lands at fair market value when the Secretary determines it to be in the public interest. A quitclaim deed would convey the land sold or exchanged and would contain terms, covenants, conditions, and reservations necessary to protect the public interest including public access to other National Forest System lands. Any land could be sold to or exchanged with a State, or a political subdivision of a State, as well as a private party.

The National Forest System lands which would be sold or exchanged are of three types: (1) parcels of 40 acres or less interspersed with or adjacent to patented mineral claims which cannot be efficiently administered and which have a fair market value of not more than $150,000; (2) parcels of 5 acres or less which are encroached upon by improvements occupied or used by persons who relied upon a non-Federal survey, title search, or land description that indicated there was no such encroachment and who had not been given advance notice that their improvements would encroach upon the Federal land; or (3) road rights-of-way, either reserved or acquired, which are substantially surrounded by privately owned lands and which are no longer needed by the United States.

H.R. 3021 would require persons receiving these lands to bear the cost of conveyance unless waived by the Secretary. Conveyance of road rights-of-way would require reimbursement to the United States by the recipient for the value of any improvements. The bill would prohibit conveyance of any Federal lands within the National Wilderness Preservation System.

H.R. 3021 would provide authority to convey three types of small, irregularly shaped tracts of National Forest System land. These are typically separate, isolated units having special management problems which impair efficient administration, such as occupancy trespass, location of rights-of-way for access and utilities, and use or sometimes inadvertent sale, by private developers or adjoining owners. Present authorities, including the General Exchange Act of March 20, 1922, are not adequate to handle the unique nature

of these tracts. Administrative remedies, such as special-use permits, do not provide a satisfactory long term solution. H.R. 3021, with the amendments we recommend, would provide authority to more efficiently administer National Forest System lands.

The mineral fractions are residual Federal lands remaining after the patenting of mineral claims in the western States over the last century. Due to the manner in which the claiming occurred, the residual lands are of an infinite variety of sizes and shapes. Many of these lands came under the administrative responsibility of the Forest Service upon creation of the National Forests. Most of these lands are no longer held for their mineral values and are of little practical use for National Forest System purposes. We believe that the $150,000 limitation imposed by the H.R. 3021 should apply not only to mineral fractions but to the other 2 types of tracts as well. We suggest the bill be amended to accomplish this. We also believe the term "mineral patents" should be clarified to refer to those lands transferred out of Federal ownership under the mining laws.

Encroachment, or good faith trespass, upon National Forest System land occurs when improvements are constructed or are being used on a parcel of land acquired in good faith by a private party but which are later found to overlap Federal land. This overlap may occur due to an improper property line survey or an error in the title or land description. This has happened when private lands adjoining public lands are subdivided and sold. There are an estimated 50,000 title claim cases involving National Forest System lands, a major portion of which involve good faith trespass due to faulty private surveys. The trespass would be considered good faith if the private party had no knowledge that the improvements would encroach upon the Federal lands. The bill specifies that the encroachment would be caused by an erroneous non-Federal survey. We believe that this provision should be broadened to encompass any erroneous survey. There are instances of erroneous Federal surveys that have caused encroachment.

The road rights-of-way exist as narrow strips of Federal land through private land. Most were created as exceptions to homestead patents in order to provide access to the homesteaded area or to the remaining public lands. Some were purchased by the Government in conjunction with the work of the Civilian Conservation Corps. Many of the roads no longer exist or were never built. The average size of the strips is 2 acres. They occur in the West, especially in Montana, Wyoming, Idaho, and Arizona. We recommend that a provision be added that would give the abutting landowners first opportunity to acquire the rights-of-way.

We also wish to offer an amendment that would broaden the scope of the bill to include a different type of land transfer. This involves the interchange of land and would be in addition to the bill's provision to sell or exchange certain National Forest System lands. Interchange as proposed here would be a special form of land transfer similar to exchange in which, for example, a landowner who might be involved in an occupancy trespass situation on adjoining Federal lands, could agree with the Federal Government to interchange titles to the small parcel of Federal land being occupied and a similar parcel of private

land which he owns. The simple transaction, with conveyances at approximate value, would clear up the encroachment situation and would avoid the more costly and time consuming process normally associated with exchange. The expense to the landowner would be the cost of survey, if any, and deed preparation and filing. We would envision interchange as a supplement to the regular land exchange process, applicable to some of the cases encompassed by H.R. 3021.

We also propose an amendment that would require the Secretary to consult with the Secretary of the Interior when conveying National Forest System lands under the provisions of this bill that contain leasable minerals in known or designated energy and mineral resource areas.

The Secretary would be directed to issue regulations to implement the bill, including specification of what constitutes the public interest and guidelines relating to disposal of mineral fractions. We recommend this direction be broadened to require a definition of and the process for determining "approximate value".

These and our other proposed amendments are shown in the enclosed supplemental statement.

The bill does not address the question of surveys of the tracts to be conveyed. Surveys of certain National Forest System lands covered by H.R. 3021 would be carried out by the Department of the Interior, Bureau of Land Management. The Department of Agriculture, Forest Service may perform certain of these surveys through authority delegated by the Bureau in a March 1980 Memorandum of Understanding.

No additional appropriations would be required to administer the provisions of H.R. 3021 nor would additional personnel be needed.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

/s/ John R. Block

Enclosure

USDA
SUPPLEMENTAL STATEMENT
H.R. 3021

Recommended Amendments:

1. On page 1, line 8 change the semicolon to a colon and insert the following proviso:

"Provided, That the Secretary shall consult with the Secretary of the Interior prior to conveying leasable minerals in known or designated energy and mineral resource areas;"

2. On page 2, line 9 change "funds" to "lands".

3. On page 2, line 15 delete "mineral patents" and insert "lands which have been transferred out of Federal ownership under the mining laws".

4. On page 2, line 16 insert "and" after "location".

5. On page 2, line 17 substitute a semicolon for the comma after "administration" and delete the remainder of clause 1 of section 2. On line 14, after "Secretary" insert "which have a value as determined by the Secretary of not more than $150,000".

6. On page 3, line 1 delete "non-Federal" and change "research" to "search".

7. On page 3, line 6 change the period to a colon and add the following proviso:

"Provided, That the abutting landowners will be given the first opportunity to acquire those rights-of-way."

8. On page 3, line 23 insert "(a)" after "Act,", change the period to a comma at the end of the sentence and add the following new subsection:

"(b) The term 'interchange' means a land transfer in which the Secretary may exchange titles with a person to land in their respective ownerships subject to the discretion of the Secretary under such regulations as he may prescribe as to appraisal, survey, notice, and other procedures applicable to exchanges."

To insure consistency between this amendment and other provisions of the bill, the following technical changes should be made:

-- On page 1, line 5 insert a comma after "sell", delete "or" and insert "or interchange" after "exchange".

-- On page 1, line 9 insert a comma after "sold", delete "or" and insert "or interchanged," after "exchanged".

-- On page 2, line 2 delete the words "equal in value to the fair market value of the lands, including the mineral estate sold or exchanged," and insert "which, in the case of conveyance by sale or exchange, is at least equal in value, including the mineral estate, or, in the case of conveyance by interchange, is of approximate value, including the mineral estate, to the land being conveyed". On page 1, line 6 insert ", including the mineral estate," after "interest".

-- On page 2, line 12 insert a comma after "sold", delete "or" and insert ", or interchanged" after "exchange". Also on line 12 insert a comma after "sale" and delete "or" the second time it occurs. On line 13 insert ", or interchange" after "exchange".

9. In section 6, page 4 renumber clause (2) as clause (3) and insert a new clause (2) after "interest;" as follows:

"(2) the definition of and the procedure for determining "approximate value".

STATEMENT OF
RAYMOND M. HOUSLEY, DEPUTY CHIEF
FOREST SERVICE
U.S. DEPARTMENT OF AGRICULTURE

Before the
Subcommittee on Forests, Family Farms, and Energy,
Committee on Agriculture,
United States House of Representatives

Concerning H.R. 3021

June 22, 1981

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

We appreciate the opportunity to appear before the Subcommittee and offer the Department of Agriculture's views on H.R. 3021, a bill to authorize the Secretary to convey parcels of National Forest System lands when it is determined to be in the public interest. We strongly urge prompt enactment of H.R. 3021. We have sought such legislation for several years in order to improve the management of the National Forests. The legislation was approved by the House in the 96th Congress after receiving careful consideration by this Subcommittee. Several improving amendments were made during your markup of the bill.

The bill before you bears close resemblance to the earlier bill. It would permit the Secretary to dispose of certain National Forest System lands by quitclaim deed through either sale or exchange. The lands are of three specific types: (1) irregularly shaped tracts of 40 acres or less interspersed with or adjacent to mineral patents which cannot be effectively administered and which have a fair market value of less than $150,000; (2) tracts of 5 acres or less occupied in good faith--or encroached upon--by private parties due to nonfederal surveying or titling errors; and, (3) road rights-of-way owned by the United States which are substantially surrounded by private lands but

which are no longer needed for a Federal purpose. The bill would not authorize conveyance of any Federal land included in the National Wilderness Preservation System.

Payment for these lands would be in land, interest in lands, or cash payment equal to the fair market value of the lands conveyed. Value would include the mineral estate when appropriate. Persons receiving these lands would be required to pay the cost of conveyance, unless such costs are waived by the Secretary.

These small parcels of land are scattered throughout the System. They are typically separate, isolated units having special management problems which hamper efficient administration, such as occupancy trespass, location of rights-of-way for access and utilities, and use (or sometimes inadvertent sale) by private developers or adjoining owners. Disposal, subject to the provisions of the bill, would be in the interest of the United States. We would not, and indeed could not, use the discretionary authority of H.R. 3021 for general disposal of National Forest System lands. Present authorities, including the General Exchange Act of March 20, 1922, are not adequate to handle the unique nature of these tracts or they impose procedural requirements so great that costs become prohibitive. Administrative remedies, such as special-use permits, do not provide a satisfactory long-term solution to either the private landowner or the United States.

The mineral fractions encompassed by this bill are residual Federal lands remaining after the patenting of mineral claims in the western States within the last century. Because of the manner in which mining claims were located, the residual lands are of an infinite variety of sizes and shapes. Most of the surrounding lands, as well as the fractions themselves,

are no longer held for their mineral values. Some have been subdivided into vacation homesites or similar, more intensive land uses. The bill prescribes a 40-acre maximum size for those fractions to be conveyed. We can resolve the mineral fraction problem within this limit. We might, for example, aggregate several parcels, any one of which may be a two-tenths of an acre triangle, contained within a legal subdivision, and dispose of them as a single unit in a sale or exchange.

The bill would expedite our handling of cases of good faith occupancy. This occurs when improvements are located or constructed on a parcel of land acquired in good faith by a private party which is later found to overlap the Federal land due to an improper property line survey or an error in the title or land description. This has happened when private lands adjacent to the National Forests are subdivided and sold. Private surveys creating the lot or subdivision may be found to be in error when the Federal land is later surveyed and marked. The authority would be limited to situations where the private party had no advance knowledge that his substantial improvements would encroach upon the National Forest System lands. These "overlaps" commonly involve less than one acre but their numbers are great. We estimated a few years ago that there were 50,000 title claim cases existing on System lands, a major portion of which are believed to involve the situations covered by this legislation. These cases occur throughout the United States.

Two means are available to us at present to resolve such encroachment administratively. A special-use permit can be granted for a specified period sufficient to amortize the investment in the improvements, after which the permit would expire and the improvements would be removed. Or, a land exchange can be made whereby the owner exchanges other private lands for the Federal land

encroached upon. Neither of these means offers a practical solution to the problem and the costs to the public are quite high. The only other alternative is a private relief bill, which is a cumbersome, time-consuming and an expensive way to resolve such problems.

The road rights-of-way are narrow strips of Federal land through private land. Many were created as exceptions to homestead patents in order to provide access to the homesteaded area or to assure access to the remaining public lands. Some were purchased by the Government in conjunction with the work of the Civilian Conservation Corps. Many of these roads were never constructed or have subsequently been abandoned. Most of these situations occur in the West, especially in Montana, Wyoming, Idaho, and Arizona. The average size of the strip is 2 acres. They are often "unofficially" incorporated into adjoining ownerships, causing various types of occupancy trespass. Like the mineral fractions they cannot be effectively administered and should be transferred to private ownership.

We wish to offer several amendments to the bill, most of which are of a technical or clarifying nature. Copies of our recommended amendments have been provided to Subcommittee staff. Three, however, are substantive and we would like to discuss these in some detail.

One of the principal advantages provided by H.R. 3021 is the means to clear up much of the outstanding landownership problems of the National Forest System. In seeking to apply the provisions of the bill to actual cases, we see an opportunity to expedite the conveyance of these small tracts, particularly when the case involves an adjoining private landowner. This would be done without sale or exchange. Rather, we would use a different type of land transfer which we call an interchange. As we conceive it,

interchange would be a special form of conveyance similar to exchange but without the rather elaborate administrative procedures associated with the formal exchange process and, thus, without the attendant costs and time requirements. For example, a landowner involved in an encroachment situation on adjoining Federal lands, could agree with the Government to interchange titles to the small parcel of Federal land being occupied and a similar parcel of land, usually adjacent, which he owns. Lands involved would normally be of about equal size and approximate value. This simple transaction would clear up the encroachment situation quickly and with minimal costs by avoiding the formal appraisal and processing procedures. The expense to the landowner would be the costs of the survey, if any, and deed preparation and filing. Interchange would be a supplement to the regular land exchange process, applicable to some of the cases encompassed by H.R. 3021 and subject to the bill's limitation on those conveyances. We believe it is an appropriate addition to the sale and exchange authority and recommend its inclusion in H.R. 3021.

Our second substantive amendment would delete the word "nonfederal" when describing surveys which have caused encroachment on National Forest System lands. While it is true that nearly all cases of encroachment involve a faulty nonfederal survey, there are a few cases where a Federal survey has lead to private party encroachment on the Federal land. We believe that H.R. 3021 should be amended to encompass any erroneous survey.

The third major amendment concerns the $150,000 limitation placed on the conveyance of mineral fractions. Because the bill is directed to disposal of only small parcels of System lands and provides for an expeditious method to do so, we believe the limitation should apply to all 3 types of tracts.

The bill does not discuss the surveying of the tracts to be conveyed. Surveys of certain National Forest System lands that would come within the scope of H.R. 3021 would be carried out by the Department of the Interior, Bureau of Land Management. The Forest Service may perform certain of these surveys through authority delegated by the Bureau in a March 1980 Memorandum of Understanding. In such cases, the survey is performed according to Government survey standards and we submit the survey records to the Bureau for review and filing.

To summarize, Mr. Chairman, we regard H.R. 3021, with the amendments we recommend, as a important addition to our authorities to manage the lands of the National Forest System. The authority it provides will help reduce costs of land conveyances, disputes with adjoining landowners and possible litigation.

That concludes my statement. I would be happy to answer the Subcommittee's questions or explain our proposed amendments in greater detail.

* (Only first page of 27-page report shown)

97TH CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 97–492
2d Session } { Part 1

CONVEYANCE OF CERTAIN NATIONAL FOREST SYSTEM LANDS

APRIL 27, 1982.—Ordered to be printed

Mr. DE LA GARZA, from the Committee on Agriculture, submitted the following

REPORT

[To accompany H.R. 3021]

[Including the cost estimate of the Congressional Budget Office]

The Committee on Agriculture, to whom was referred the bill (H.R. 3021) to authorize the Secretary of Agriculture to convey certain National Forest System lands, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

TITLE I—TRANSFER OF SMALL PARCELS

SEC. 101. The Secretary of Agriculture, referred to in this title as "the Secretary", may, when the Secretary determines it to be in the public interest, (1) sell, exchange or interchange, by quitclaim deed, all right, title, and interest, including the mineral estate, of the United States in and to National Forest System lands described in section 102; and (2) accept, as consideration for the lands sold, exchanged or interchanged, other lands, interest in lands, or cash payment, or any combination of such forms of consideration which, in the case of sales or exchanges, are at least equal to the fair market value of the lands, including the mineral estate, sold or exchanged by the Secretary, or, in the case of interchanges, approximate in value the lands, including the mineral estate, interchanged by the Secretary. The Secretary shall insert in any such quitclaim deed such terms, covenants, conditions, and reservations as the Secretary deems necessary to ensure protection of the public interest, including protection of the scenic, wildlife, and wilderness values of the National Forest System and provision for appropriate public access to and use of lands within the System.

SEC. 102. The National Forest System lands which may be sold, exchanged or interchanged under this title are those (1) the exchange, sale or interchange of which is not practicable under any other authority of the Secretary; (2) which, in the case of sales or exchanges, have a fair market value of not more than $150,000, as determined by the Secretary through appraisal within one year before or after the date of application for sale or exchange is made to the Secretary, or, in the case of interchanges, have an approximate value of not more than

89–006 O

[COMMITTEE PRINT]

[As ordered reported, amended, by the Subcommittee on Forests, Family Farms and Energy on July 15, 1981]

97TH CONGRESS
2D SESSION

H. R. 3021

To authorize the Secretary of Agriculture to convey certain National Forest System lands, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 6, 1981

Mr. MARLENEE (for himself and Mr. WEAVER) introduced the following bill; which was referred jointly to the Committees on Agriculture and Interior and Insular Affairs

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A BILL

To authorize the Secretary of Agriculture to convey certain National Forest System lands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—TRANSFER OF SMALL PARCELS

SEC. 101. The Secretary of Agriculture, referred to in this title as "the Secretary", may, when the Secretary determines it to be in the public interest (1) sell, exchange or

interchange, by quitclaim deed, all right, title, and interest, including the mineral estate, of the United States in and to National Forest System lands described in section 102; and (2) accept, as consideration for the lands sold, exchanged or interchanged, other lands, interest in lands, or cash payment, or any combination of such forms of consideration which, in the case of sales or exchanges, are at least equal to the fair market value of the lands, including the mineral estate, sold or exchanged by the Secretary, or, in the case of interchanges, approximate in value the lands, including the mineral estate, interchanged by the Secretary. The Secretary shall insert in any such quitclaim deed such terms, covenants, conditions, and reservations as the Secretary deems necessary to ensure protection of the public interest, including protection of the scenic, wildlife, and wilderness values of the National Forest System and provision for appropriate public access to and use of lands within the System.

SEC. 102. The National Forest System lands which may be sold, exchanged or interchanged under this title are those (1) the exchange, sale or interchange of which is not practicable under any other authority of the Secretary; (2) which, in the case of sales or exchanges, have a fair market value, as determined by the Secretary through appraisal within one year before or after the date of application for sale or exchange is made to the Secretary, or, in the case of inter-

changes, have an approximate value, as determined by the Secretary, of not more than $150,000; and (3) which are (A) parcels of 40 acres or less interspersed with or adjacent to lands which have been transferred out of Federal ownership under the mining laws and are determined by the Secretary, because of location or size, not to be subject to efficient administration; (B) parcels of five acres or less which are encroached upon by improvements occupied or used under claim or color of title by persons to whom no advance notice was given that the improvements encroached or would encroach upon such parcels, and who in good faith relied upon an erroneous survey, title search, or other land description indicating that there was no such encroachment; or (C) road rights-of-way, reserved or acquired, which are substantially surrounded by lands not owned by the United States and which are no longer needed by the United States: *Provided,* That abutting landowners shall be given the first opportunity to acquire such rights-of-way.

SEC. 103. Any person to whom lands are conveyed pursuant to this title shall bear all reasonable costs of administration, survey, and appraisal incidental to such conveyance, as determined by the Secretary. In the case of road rights-of-way conveyed pursuant to this title, the person to whom the right-of-way is conveyed shall reimburse the United States for the value of any improvements to such right-of-way which

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may have been made by the United States. The Secretary may, in cases in which the Secretary determines it would be consistent with the public interest, waive the payment of costs or reimbursement for the value of improvements to rights-of-way otherwise required by this section.

SEC. 104. Conveyance of any road rights-of-way under this title shall not be construed as permitting any designation, maintenance, or use of such rights-of-way for road or other purposes except to the extent permitted by State or local law and under conditions imposed by such law.

SEC. 105. For purposes of this title, (1) the word "person" includes any State or any political subdivision or entity thereof, and (2) the word "interchange" means a transfer of lands under which the Secretary, in the Secretary's sole discretion, trades titles to lands with a person under such simplified procedures as the Secretary may by regulation prescribe with respect to appraisal, survey, notice and other factors.

SEC. 106. The Secretary shall issue such regulations as may be necessary to carry out the provisions of this title.

SEC. 107. Nothing in this title shall authorize conveyance of public lands within the National Wilderness Preservation System, the National Wild and Scenic Rivers System, the National System of Trails, and any national recreation area.

TITLE II—EXCHANGE OF CERTAIN NATIONAL FOREST AND OTHER LANDS

SEC. 201. The Act of December 4, 1967 (Public Law 90–171; 16 U.S.C. 485a) is amended to read as follows:

"Whenever an exchange of land is proposed by a State, county, or municipal government or public school district or other public school authority under the Act of March 20, 1922 (42 Stat. 465), as amended (16 U.S.C. 485–486), or other authority under which the Secretary of Agriculture is authorized to exchange national forest lands or other lands administered by the Forest Service, if the State, county, or municipal government or public school district or public school authority proposing the exchange has insufficient land to offer, the exchange may be completed upon deposit with the Secretary of Agriculture of a portion or all of the value of the selected land. Any amount so deposited shall be covered into a special fund in the Treasury which when appropriated shall be available until expended by the Secretary of Agriculture for the acquisition of lands in the same State as the selected lands and which are determined by the Secretary to be suitable for the same purposes as the selected lands. Lands so acquired shall have the same status and shall be subjected to the same laws, regulations, and rules as the selected lands.

"The provisions of this Act shall not be applicable to the conveyance in exchange of any parcel of land which (1) exceeds forty acres in size or $150,000 in value, in the case of an exchange with any one State, county, or municipal government; or (2) exceeds eighty acres in size, in the case of an exchange with any one public school district or other public school authority. If land conveyed to any State, county, or local government or public school district or other public school authority under any authority referred to in this Act shall ever cease to be used for a public purpose, all right, title, and interest in and to such land, and any improvements located thereon, shall revert to and become the property of the United States, which shall have immediate right of entry thereon.".

TITLE III—CONGRESSIONAL REVIEW OF CERTAIN LAND EXCHANGES

SEC. 301. (a) The Secretary of Agriculture, referred to in this title as "the Secretary", shall, in all cases in which the value of the land proposed to be purchased or the national forest land proposed to be exchanged by the Secretary exceeds $150,000, notify the appropriate committees of jurisdiction of the House of Representatives and the Senate of the Secretary's intention to purchase lands for the National Forest System or to make an exchange of lands under section

7 of the Act of March 1, 1911 (16 U.S.C, 516) or the Act of March 20, 1922 (16 U.S.C. 485–486).

(b) The Secretary may complete any purchase or exchange of lands subject to subsection (a) upon the expiration of thirty calendar days after notice of the intended exchange is received by the appropriate committees of jurisdiction unless, prior to the expiration of such thirty-day period, any of such committees adopts a resolution disapproving the purchase or exchange, in which event the purchase or exchange shall not be made.

SEC. 302. Section 17(b) of the National Forest Management Act of 1976 is repealed.

TITLE IV—SMALL SALES

SEC. 401. Notwithstanding any other provisions of law, the Secretary of Agriculture, referred to in this title as "the Secretary", may sell individual trees or small numbers of trees located on National Forest System lands and determined by the Secretary to be dead, diseased, damaged, dying, or down, as low volume per acre sanitation or salvage timber harvests under the following conditions:

(1) the appraised value of the sale is less than $10,000;

(2) the appraised value of the sale is equal to or greater than the estimated costs associated with the sale; and

(3) the sale is determined by the Secretary to be consistent with multiple use management.

SEC. 402. Sales made under this title shall not be subject to advertising or competitive bidding, but shall be made pursuant to negotiations with persons who have located and indicated an interest in purchasing timber described in section 401.

SEC. 403. (a) The Secretary shall establish and administer a special small salvage fund into which all proceeds from the sale of trees under this title shall be deposited. To the extent provided by appropriation acts, amounts in the fund shall be available to the Secretary for payment of all expenses related to such sales.

(b) The Secretary shall periodically transfer any amounts in the fund in excess of $1,000,000 to the Secretary of the Treasury for covering into the miscellaneous receipts in the Treasury of the United States.

SEC. 404. The Secretary shall issue such regulations as may be necessary to carry out the provisions of this title.

SEC. 405. The provisions of this title shall become effective on October 1, 1982.

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HOUSE INTERIOR AND INSULAR AFFAIRS COMMITTEE:
- USDA Report to Committee on H.R. 3021

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

July 7, 1971

Honorable Morris K. Udall
Chairman, Committee on Interior and
Insular Affairs
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Here is our report on H.R. 3021, a bill "To authorize the Secretary of Agriculture to convey certain National Forest System lands, and for other purposes."

The Department of Agriculture recommends that H.R. 3021 be enacted, if amended as recommended herein.

This bill would authorize the Secretary of Agriculture to sell or exchange certain National Forest System lands at fair market value when the Secretary determines it to be in the public interest. A quitclaim deed would convey the land sold or exchanged and would contain terms, covenants, conditions, and reservations necessary to protect the public interest including public access to other National Forest System lands. Any land could be sold to or exchanged with a State, or a political subdivision of a State, as well as a private party.

The National Forest System lands which would be sold or exchanged are of three types: (1) parcels of 40 acres or less interspersed with or adjacent to patented mineral claims which cannot be efficiently administered and which have a fair market value of not more than $150,000; (2) parcels of 5 acres or less which are encroached upon by improvements occupied or used by persons who relied upon a non-Federal survey, title search, or land description that indicated there was no such encroachment and who had not been given advance notice that their improvements would encroach upon the Federal land; or (3) road rights-of-way, either reserved or acquired, which are substantially surrounded by privately owned lands and which are no longer needed by the United States.

H.R. 3021 would require persons receiving these lands to bear the cost of conveyance unless waived by the Secretary. Conveyance of road rights-of-way would require reimbursement to the United States by the recipient for the value of any improvements. The bill would prohibit conveyance of any Federal lands within the National Wilderness Preservation System.

H.R. 3021 would provide authority to convey three types of small, irregularly shaped tracts of National Forest System land. These are typically separate, isolated units having special management problems which impair efficient administration, such as occupancy trespass, location of rights-of-way for access and utilities, and use or sometimes inadvertent sale, by private developers or adjoining owners. Present authorities, including the General Exchange Act of March 20, 1922, are not adequate to handle the unique nature

of these tracts. Administrative remedies, such as special-use permits, do not provide a satisfactory long term solution. H.R. 3021, with the amendments we recommend, would provide authority to more efficiently administer National Forest System lands.

The mineral fractions are residual Federal lands remaining after the patenting of mineral claims in the western States over the last century. Due to the manner in which the claiming occurred, the residual lands are of an infinite variety of sizes and shapes. Many of these lands came under the administrative responsibility of the Forest Service upon creation of the National Forests. Most of these lands are no longer held for their mineral values and are of little practical use for National Forest System purposes. We believe that the $150,000 limitation imposed by the H.R. 3021 should apply not only to mineral fractions but to the other 2 types of tracts as well. We suggest the bill be amended to accomplish this. We also believe the term "mineral patents" should be clarified to refer to those lands transferred out of Federal ownership under the mining laws.

Encroachment, or good faith trespass, upon National Forest System land occurs when improvements are constructed or are being used on a parcel of land acquired in good faith by a private party but which are later found to overlap Federal land. This overlap may occur due to an improper property line survey or an error in the title or land description. This has happened when private lands adjoining public lands are subdivided and sold. There are an estimated 50,000 title claim cases involving National Forest System lands, a major portion of which involve good faith trespass due to faulty private surveys. The trespass would be considered good faith if the private party had no knowledge that the improvements would encroach upon the Federal lands. The bill specifies that the encroachment would be caused by an erroneous non-Federal survey. We believe that this provision should be broadened to encompass any erroneous survey. There are instances of erroneous Federal surveys that have caused encroachment.

The road rights-of-way exist as narrow strips of Federal land through private land. Most were created as exceptions to homestead patents in order to provide access to the homesteaded area or to the remaining public lands. Some were purchased by the Government in conjunction with the work of the Civilian Conservation Corps. Many of the roads no longer exist or were never built. The average size of the strips is 2 acres. They occur in the West, especially in Montana, Wyoming, Idaho, and Arizona. We recommend that a provision be added that would give the abutting landowners first opportunity to acquire the rights-of-way.

We also wish to offer an amendment that would broaden the scope of the bill to include a different type of land transfer. This involves the interchange of land and would be in addition to the bill's provision to sell or exchange certain National Forest System lands. Interchange as proposed here would be a special form of land transfer similar to exchange in which, for example, a landowner who might be involved in an occupancy trespass situation on adjoining Federal lands, could agree with the Federal Government to interchange titles to the small parcel of Federal land being occupied and a similar parcel of private

land which he owns. The simple transaction, with conveyances at approximate value, would clear up the encroachment situation and would avoid the more costly and time consuming process normally associated with exchange. The expense to the landowner would be the cost of survey, if any, and deed preparation and filing. We would envision interchange as a supplement to the regular land exchange process, applicable to some of the cases encompassed by H.R. 3021.

We also propose an amendment that would require the Secretary to consult with the Secretary of the Interior when conveying National Forest System lands under the provisions of this bill that contain leasable minerals in known or designated energy and mineral resource areas.

The Secretary would be directed to issue regulations to implement the bill, including specification of what constitutes the public interest and guidelines relating to disposal of mineral fractions. We recommend this direction be broadened to require a definition of and the process for determining "approximate value".

These and our other proposed amendments are shown in the enclosed supplemental statement.

The bill does not address the question of surveys of the tracts to be conveyed. Surveys of certain National Forest System lands covered by H.R. 3021 would be carried out by the Department of the Interior, Bureau of Land Management. The Department of Agriculture, Forest Service may perform certain of these surveys through authority delegated by the Bureau in a March 1980 Memorandum of Understanding.

No additional appropriations would be required to administer the provisions of H.R. 3021 nor would additional personnel be needed.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

John R. Block
Secretary

Enclosure

USDA
SUPPLEMENTAL STATEMENT
H.R. 3021

Recommended Amendments:

1. On page 1, line 8 change the semicolon to a colon and insert the following proviso:

"Provided, That the Secretary shall consult with the Secretary of the Interior prior to conveying leasable minerals in known or designated energy and mineral resource areas;"

2. On page 2, line 9 change "funds" to "lands".

3. On page 2, line 15 delete "mineral patents" and insert "lands which have been transferred out of Federal ownership under the mining laws".

4. On page 2, line 16 insert "and" after "location".

5. On page 2, line 17 substitute a semicolon for the comma after "administration" and delete the remainder of clause 1 of section 2. On line 14, after "Secretary" insert "which have a value as determined by the Secretary of not more than $150,000".

6. On page 3, line 1 delete "non-Federal" and change "research" to "search".

7. On page 3, line 6 change the period to a colon and add the following proviso:

"Provided, That the abutting landowners will be given the first opportunity to acquire those rights-of-way."

8. On page 3, line 23 insert "(a)" after "Act,", change the period to a comma at the end of the sentence and add the following new subsection:

"(b) The term 'interchange' means a land transfer in which the Secretary may exchange titles with a person to land in their respective ownerships subject to the discretion of the Secretary under such regulations as he may prescribe as to appraisal, survey, notice, and other procedures applicable to exchanges."

To insure consistency between this amendment and other provisions of the bill, the following technical changes should be made:

-- On page 1, line 5 insert a comma after "sell", delete "or" and insert "or interchange" after "exchange".

-- On page 1, line 9 insert a comma after "sold", delete "or" and insert "or interchanged," after "exchanged".

-- On page 2, line 2 delete the words "equal in value to the fair market value of the lands, including the mineral estate sold or exchanged," and insert "which, in the case of conveyance by sale or exchange, is at least equal in value, including the mineral estate, or, in the case of conveyance by interchange, is at least approximate value, including the mineral estate, to the land being conveyed". On page 1, line 6 insert ", including the mineral estate," after "interest".

-- On page 2, line 12 insert a comma after "sold", delete "or" and insert ", or interchanged" after "exchange". Also on line 12 insert a comma after "sale" and delete "or" the second time it occurs. On line 13 insert ", or interchange" after "exchange".

9. In section 6, page 4 renumber clause (2) as clause (3) and insert a new clause (2) after "interest;" as follows:

"(2) the definition of and the procedure for determining "approximate value".

SENATE ENERGY AND NATURAL RESOURCES COMMITTEE:

- Request for Report
- USDA Report to Committee on S. 705 as Amended
- USDA Testimony before Subcommittee by John B. Crowell
- Committee Report
- S. 705 as Amended and Reported by Committee

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United States Senate

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
WASHINGTON, D.C. 20510

82 JUN 15 A8:17

June 10, 1982

S-C8167

S. 705

NRM, OGPA
6/16/82
Similar request already completed on HR. 3021
Senate hearing scheduled for 6/24/82

The Secretary of Agriculture
Department of Agriculture
Washington, D.C. 20250

My dear Mr. Secretary:

The Senate Committee on Energy and Natural Resources is herewith transmitting S. 705 for your study and report thereon.

It is requested that 50 copies of your report on this bill be supplied for the use of the Committee, the subcommittee, and the staff.

It is the hope of the Committee that your report may be submitted within 30 days, or that we be advised if any delay beyond this time period is necessary.

Sincerely yours,

James A. McClure

James A. McClure
Chairman

Enclosure

Referred also to: OMB

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

30 JUN 1982

Honorable James A. McClure
Chairman, Committee on Energy
and Natural Resources
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

As you requested, here is our report on S. 705, a bill "To authorize the Secretary of Agriculture to convey certain National Forest System lands, and for other purposes," as reported by the Senate Agriculture Committee, April 19, 1982.

The Department of Agriculture recommends that S. 705 be enacted.

S. 705 would authorize the Secretary of Agriculture to sell, exchange, or interchange, all right, title and interest, including the mineral estate, to certain National Forest System lands when the Secretary determines it to be in the public interest. A quitclaim deed would convey the land sold, exchanged, or interchanged. Any conveyance could be made to a State or political subdivision of a State as well as to private parties. Payment for the lands could be in cash, interests in land, or other lands and would be of equal or approximately equal value.

The lands which would be sold, exchanged or interchanged are of three types: (1) tracts of 40 acres or less interspersed with or adjacent to patented mineral claims which cannot be efficiently administered; (2) parcels of 10 acres or less which are encroached upon by improvements occupied or used by persons who relied upon an erroneous survey, title search or land description and who had not been given advance notice that their improvements would encroach upon the Federal land; or (3) road rights-of-way, either reserved or acquired, substantially surrounded by privately owned lands and which are no longer needed by the United States. The tracts which would be disposed of could not have a value of more than $150,000. In determining value of the tract, the Secretary could waive the value of any improvements made by any person other than the Government.

S. 705 would require persons receiving these lands to bear the costs of conveyance unless waived by the Secretary. Conveyance of road rights-of-way would require reimbursement to the United States by the recipient for the value of any improvements made by the United States. The abutting landowners would be given the first opportunity to acquire the road rights-of-way. The bill would prohibit conveyance of any Federal lands within the National Wilderness Preservation System.

S. 705 would provide authority to convey three types of small, irregularly shaped tracts of National Forest System land. These are typically separate, isolated units having special management problems which impair efficient administration.

Present authorities, including the General Exchange Act of March 20, 1922, are not adequate to handle the unique nature of these tracts. Administrative remedies, such as special use permits, do not provide a satisfactory long-term solution. S. 705 would provide authority to more efficiently administer National Forest System lands.

The mineral fractions are residual Federal lands remaining after the patenting of mineral claims in the Western States over the last century. Due to the manner in which the claiming occurred, the residual lands are of an infinite variety of sizes and shapes. Many of these lands came under the administrative responsibility of the Forest Service upon creation of the National Forests. Most of these lands are no longer held for their mineral values and are of little practical use for National Forest System purposes.

Encroachment, or good faith trespass, upon National Forest System land occurs when improvements are constructed or are being used on a parcel of land acquired in good faith by a private party but which is later found to overlap Federal land. This overlap may occur due to an improper property line survey or an error in the title or land description. This has happened when private lands adjoining public lands are subdivided and sold. The trespass would be considered good faith if the private party had no knowledge that the improvements would encroach upon the Federal lands. There are an estimated 50,000 title claim cases existing on National Forest System lands--a large number of which involve good faith trespass due to faulty private surveys. These occur throughout the United States. These are generally of small size, most involve less than 1 acre.

The road rights-of-way exist as narrow strips of Federal land through private land. Most were created as exceptions to homestead patents in order to provide access to the homesteaded area or to the remaining public lands. Some were purchased by the Government in conjunction with the work of the Civilian Conservation Corps. Many of the roads no longer exist or were never built. The average size of the strips is 2 acres. They occur in the West, especially in Montana, Wyoming, Idaho, and Arizona.

Conveyance by interchange is a new concept of Federal land disposal. Interchange as proposed in S. 705 would be a special form of land transfer similar to exchange in which, for example, a landowner who might be involved in an occupancy trespass situation on adjoining Federal lands, could agree with the Federal Government to interchange titles to the small parcel of Federal land being occupied and a similar parcel of private land which he owns. The simple transaction, with conveyances at approximate value, would clear up the encroachment situation and would avoid the more costly and time consuming process normally associated with exchange. The expense to the landowner would be the cost of survey, if any, and deed preparation and filing. We would envision interchange as a supplement to the regular land exchange process, applicable to some of the cases encompassed by S. 705.

Section 8 of S. 705 would amend the Act of December 4, 1967 (81 Stat. 531) which authorizes the Secretary of Agriculture, when negotiating a land exchange with a public school district under the General Exchange Act of 1922, to accept cash in lieu of land for a portion or all of the value of the selected Federal land. This amendment would broaden the 1967 Act and authorize cash equalization in exchanges of National Forest System land with State and local government entities in addition

to the present authority for public school districts. The authority provided by this section would not be limited to the specific types of National Forest System lands encompassed by S. 705. All land exchanges with States, counties and municipal governments, in addition to those with public school districts, would be affected by this section.

No additional appropriations would be required to administer the provisions of S. 705 nor would additional personnel be needed.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

John R. Block
Secretary

STATEMENT OF
JOHN B. CROWELL, JR.
ASSISTANT SECRETARY FOR NATURAL RESOURCES AND ENVIRONMENT
UNITED STATES DEPARTMENT OF AGRICULTURE

Before the
Subcommittee on Public Lands and Reserved Water,
Committee on Energy and Natural Resources
United States Senate

Concerning S. 705

June 24, 1982

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

We appreciate the opportunity to appear here today to present the Department of Agriculture's views on S. 705. The legislation would authorize the Secretary of Agriculture to convey certain parcels of National Forest System lands when it is determined to be in the public interest. We strongly urge prompt enactment of this legislation. The authority which it would provide would be of considerable value in improving the efficiency of management of the lands of the National Forest System. This bill is nearly identical to one which passed the Senate in December 1980.

Our comments are directed to the bill as favorably reported by the Agriculture Committee on April 19, 1982. Our report to the Chairman of that Committee recommended several amendments which, with two exceptions, were incorporated into the bill. Subsequent discussions with the Committee removed our remaining concerns and thus we are in complete agreement with the current version of the bill.

The three types of tracts which could be conveyed under provisions of S. 705 include: (1) mineral fractions of 40 acres or less interspersed with or adjacent to mineral patents; (2) tracts of 10 acres or less encroached upon by adjoining landowners due to an erroneous survey, or incorrect title search

or land description; and (3) road rights-of-way no longer needed by the United States. The bill limits the value of any tract which would be disposed of to $150,000 and would prohibit conveyance of any land within the National Wilderness Preservation System.

Conveyance could be by sale, exchange, or, in appropriate cases, by an expedited form of exchange we are calling "interchange" which I will explain in greater detail later in my statement. Payment could be by cash, land, or interests in lands, and would be of equal or approximately equal value. The value of land would be determined by appraisal and could exclude the value of improvements made by persons other than the Government. The person acquiring the Federal land would generally pay the costs of conveyance including surveys and appraisals.

The lands which could be affected by the provisions of S. 705 are scattered throughout the National Forest System. They are typically isolated units having management problems which prevent them from being efficiently administered as part of the System. Problems frequently encountered include occupancy trespass, use as rights-of-way for access or utilities, and use (or sometimes inadvertent purported sale) by private developers or adjoining owners. Disposal of these lands would be in the interest of the United States.

The mineral fractions are residual Federal lands remaining after patenting of mining claims in the Western States. Because of the way the patenting took place, the Federal lands are of an infinite variety of sizes and shapes. Many of the patented lands are no longer used for their mineral values. They are often developed into vacation homesites or other more intensive lands uses. The adjacent residual Federal lands, or mineral fractions, have little utility as National Forest System lands, but could be sold to good advantage. We believe the 40-acre limit will allow us to resolve the mineral fraction problem.

Encroachment, also described as good faith trespass, occurs on National Forest System lands when improvements are constructed or are being used on a parcel of land acquired or being used in good faith by a private party which is later found to be located on Federal land. An encroachment can be caused by an erroneous property line survey or by an error in the title or land description. Such errors frequently happen when private lands adjoining the National Forests are subdivided and sold. Surveys which established the lot or subdivision may be found to be in error when the Federal land is surveyed or resurveyed and marked. We estimated a few years ago that there were 50,000 title claim cases involving National Forest System lands, a major portion of which are believed to be good faith occupancy due to a faulty private survey. These "overlaps" commonly involve less than 1 acre.

The road rights-of-way are narrow strips of Federal land or interests in land which cross nonfederal land. Many were created as exceptions to homesteads to provide access to the homesteaded area or assure access to the remaining public lands. Some were purchased by the Government in conjunction with the work of the Civilian Conservation Corps. Many have long since been abandoned or were never used for the intended purpose. The strip is often "unofficially" incorporated into the adjoining lands causing various types of occupancy trespass. Their average size is 2 acres. Most occur in the West, especially in Montana, Wyoming, Idaho, and Arizona.

The bill would supplement our current authorities, including the General Exchange Act of 1922, to convey National Forest System land. Administrative remedies for the problems associated with these lands, such as special use permits which are currently used to partially resolve such problems, do not provide a satisfactory long-term solution either to the adjoining landowner or the United

States. Private relief legislation is an alternative, but because of the cost and time normally required to enact such legislation, it is not a practical or efficient way to resolve the large number of cases.

As we evaluated the conveyance process that would be required to implement the bill's provisions, we found that the bill's advantages may be overshadowed by the burdensome requirements for conveyance. Sale or exchange and their procedures are appropriate and necessary in most cases, particularly those involving several acres or tracts of high value. But how should we handle the cases of good faith trespass where an adjoining landowner has inadvertently built his house partially or wholly on Federal land and occupies perhaps a quarter of an acre? The formal exchange process would require considerable time and expense to both parties and could easily exceed the value of the property in question.

We see an opportunity to speed up the conveyance process in situations like this. It would involve use of an expedited exchange which we call an interchange. As we envision it, interchange would be a special form of exchange but without the elaborate procedures associated with a formal exchange that are carried out under existing statutory authority.

An example of circumstances appropriate for interchange might involve the landowner whose house is occupying Federal land; he could agree with the Government to interchange titles to the occupied parcel of Federal land for a similar parcel of land, usually adjacent, which that person owns. Lands involved would normally be of equal size and approximately equal value. Such a simple transaction would clear up the encroachment quickly and with minimal costs by avoiding the formal appraisal and processing procedures associated with exchanges. The landowners's expense would be limited to the

costs of survey, if any, and deed preparation and filing. Interchange would be a supplement to the more formal exchange process and would be applicable to some of the cases encompassed by S. 705. Its use would be limited by the criteria and limitations set forth in the bill. We recognize that it is a substantive addition to the bill but we believe it would greatly improve our ability to handle conveyance of many small tracts.

Section 8 of the bill deals with a different aspect of land conveyances on the National Forest System. It would amend the Act of December 4, 1967, known as the Sisk Act. This law authorizes the Secretary of Agriculture, when negotiating a land exchange with a public school district under the General Exchange Act of 1922, to accept cash in lieu of land for a portion or all of the value of the selected Federal property. The amendment would broaden the provisions of the Act to include States, counties, and municipal governments. It would apply to all land exchanges with these government entities, not just those specific types listed in this bill. We concur with this broadening of the cash equalization provisions of the Sisk Act.

In summary, Mr. Chairman, we strongly support S. 705 as amended by the Agriculture Committee. It would be an important addition to our authorities to manage the lands of the National Forest System. It would help reduce costs of management and of land conveyances, disputes with adjoining landowners, and possible litigation.

That concludes my prepared statement. I would be happy to answer the Subcommittee's questions.

Calendar No. 700

97TH CONGRESS
2d Session
} SENATE { REPORT
No. 97-490

AUTHORITY TO CONVEY CERTAIN NATIONAL FOREST SYSTEM LANDS

JULY 1 (legislative day, JUNE 8), 1982.—Ordered to be printed

Mr. MCCLURE, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 705]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 705) to authorize the Secretary of Agriculture to convey certain National Forest System lands, and for other purposes, having considered the same, reports favorably thereon with amendments to the bill as reported by the Committee on Agriculture, Nutrition and Forestry and recommends that the bill as amended do pass.

The amendments are as follows:

1. On page 5, line 12, after the word "lands" the second time it appears, insert the following:

> of approximately equal value where the Secretary finds that such a value determination can be made without a formal appraisal and.

2. On page 6, line 3, strike "approximate value," and insert "approximately equal value,".

3. On page 6, after line 5, add the following:

> The Secretary shall insert in any such quitclaim deed such terms, covenants, conditions, and reservations as the Secretary deems necessary to ensure protection of the public interest, including protection of the scenic, wildlife, and recreation values of the National Forest System and provision for appropriate public access to and use of lands within the System. The preceeding sentence shall not be applicable to deeds issued by the Secretary to lands outside the boundary of units of the National Forest System.

4. On page 7, line 22, strike "such conveyance" and insert "any conveyance authorized by this Act".

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5. On page 7, strike "consistent with the public interest," wherever it appears and insert in lieu thereof "in the public interest,".

6. On page 8, line 11, strike " 'approximate value;' " and insert " 'approximately equal value;' ".

7. On page 8, line 18, strike "System." and insert "System, National Wild and Scenic Rivers System, National Trails System, or National Monuments. Nothing in this Act shall authorize sale of Federal lands, within National Recreation Areas.".

8. On page 8, line 19, strike "Sec. 8." and insert "Sec. 8(a)".

9. On page 8, after line 23, insert the following:

(b) The Act of December 4, 1967 (81 Stat. 531), is further amended by adding the following at the end thereof: "Lands may be conveyed to any State, county, or municipal government pursuant to this Act only if the lands were being utilized by such entities on the date of enactment of this sentence. Lands so conveyed may be used only for the purposes for which they were being used prior to conveyance.'.

Purpose

S. 705, as amended by the Committee on Energy and Natural Resources, would authorize the Secretary of Agriculture to convey by quitclaim deed certain small parcels of national forest system lands the sale or exchange of which is not practicable under any other authority of the Secretary. The bill as reported from the Energy and Natural Resources Committee would specifically exclude from conveyance under its provisions any lands within the National Wilderness Preservation System, National Wild and Scenic River System, National Trails System, or National Monuments. Sale authority is not authorized for federal lands in National Recreation Areas administered by the U.S. Forest Service although exchange and interchange are permitted.

Parcels that may be conveyed under the bill cannot exceed $150,000 in value. The consideration accepted by the Secretary must be at least equal to the value of any lands being sold or exchanged, or of approximately equal value to any lands being interchanged by the Secretary.

In addition, the bill would require that persons to whom land is conveyed under this authority bear the costs incident to the conveyance. Such persons shall also reimburse the United States for the value of any improvements made to any right-of-way conveyed by this Act. If determined to be in the public interest the Secretary may waive such conveyance costs and the reimbursement requirements. In determining the value of land to be conveyed, the bill authorizes the Secretary, if it is in the public interest, to allow credit for improvements made to the land by any person other than the United States.

The bill would provide that the use of rights-of-way conveyed under this authority would be controlled by State and local law. The Secretary would be authorized to issue regulations as necessary to carry out the provisions of the Act. The bill would also authorize exchanges of national forest system lands with State and local government entities under the provisions of the Act of December 4, 1967. Such exchanges are authorized, however, only if the lands were being utilized by such entities on the date of enactment of this Act. Lands so conveyed may be used for only the purpose for which they were used prior to conveyance.

3

Background and Need

For a discussion of the Background and Need for S. 705, see pp. 3 to 5 of Sen. Rept. 97–322 of the Committee on Agriculture, Nutrition, and Forestry. The Committee on Energy and Natural Resources concurs with this discussion.

Legislative History

S. 705 was introduced by Senator Domenici on March 12, 1981 and referred to the Committee on Agriculture, Nutrition, and Forestry. A hearing by the Subcommittee on Forestry, Water Resources, and Environment was held on October 22, 1981. On March 31, 1982 the Committee on Agriculture, Nutrition and Forestry reported favorably S. 705 with amendments. On May 27, 1982, S. 705 was re-referred to the Committee on Energy and Natural Resources for 30 days. The Public Lands and Reserved Water Subcommittee held a hearing on S. 705 on June 24, 1982. The Administration supports S. 705 as reported by the Committee on Agriculture, Nutrition, and Forestry. At a business session on June 30, 1982, the Energy and Natural Resources Committee ordered S. 705 favorably reported after adopting several amendments to the bill as reported by the Committee on Agriculture, Nutrition, and Forestry.

Committee Recommendation and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in open business session on June 30, 1982 by unanimous vote of a quorum present recommended that the Senate pass S. 705, if amended, as described herein.

The rollcall vote on reporting the measure was 18 yeas, no nays as follows:

YEAS	NAYS
McClure	
Hatfield	
Weicker [1]	
Domenici	
Wallop	
Warner [1]	
Murkowski	
Nickles [1]	
East [1]	
Heinz [1]	
Jackson	
Johnston	
Bumpers	
Ford	
Matsunaga [1]	
Melcher	
Tsongas [1]	
Bradley	

[1] Indicates voted by proxy.

Committee Amendments

During the consideration of S. 705, the Committee adopted nine amendments.

Amendments No. 1 and 2 are intended to clarify the Committee's desire that conveyances by the special form of land transfer defined as "interchange" be at approximately equal value. The Forest Service is expected to use the best available practices and procedures to arrive at the approximation of equal value short of the formal appraisal procedures and steps currently used to determine equal value. The Forest Service has indicated that on a land value basis an interchange would normally be within 95 percent of equal value.

Amendment No. 3 authorized the Secretary of Agriculture to retain those interests in any conveyance which he deems necessary to ensure the protection of the public interest including protection of the scenic, wildlife, and recreation values of the National Forest System and to provide for appropriate public access.

In the case of deeds issued by the Secretary to lands outside of the boundary of units of the National Forest System, the Committee felt the requirement to retain such an interest was unnecessary.

Amendment No. 4 is clarifying in nature. It makes it clear that the Secretary may waive payment by any person of costs incidental to any conveyance authorized by this Act. S. 705 as referred to the Energy and Natural Resources Committee left a question in section 4 as to whether the Secretary's authority to waive payment applied to all conveyances or only applied to the road rights-of-way conveyances. The amendment is intended to ensure that such authority applies to all conveyances under the Act.

Amendment No. 5 is technical in nature.

Amendment No. 6 is conforming in nature. The Secretary is to issue regulations including specification of the definition of and procedure for determining "approximately equal value" for use in interchange conveyances.

Amendment No. 7 adds Federal lands in the National Wild and Scenic Rivers System, National Trails System or the National Forest Monuments along with those lands in the National Wilderness Preservation system which are *not* authorized to be conveyed under the Act. In National Recreation Areas administered by the U.S. Forest Service, Federal Lands may not be sold under the Act, but other forms of conveyance may be used. The Committee added these additional lands in recognition of the special classification afforded them by congressional designation.

Amendment No. 8 is technical in nature.

Amendment No. 9 provides the Secretary with the authority to convey lands to a state, county, or municipal government under the Act of December 4, 1967, but adds a requirement that the lands so conveyed must have been utilized by those entities on date of enactment and further limits the use of such lands to only those purposes for which they were being used prior to conveyance. The amendment does not apply to public school districts or other public school authority under the Act of December 4, 1967. The committee expects the U.S. Forest Service to assess utilization by reviewing physical or actual use.

Section-by-Section Analysis

Section 1 defines the terms "person", "interchange", and "Secretary". The term "person" includes States or any political subdivisions or entities thereof, such as county and municipal governments, independent school districts and similar entities. The term "interchange" means a land transfer involving the change of titles to or interests in lands of approximately equal value between the Secretary and another person under such regulations as the Secretary may prescribe.

Section 2 authorizes the Secretary of Agriculture, when in the public interest, to sell, exchange, or interchange by quitclaim deed, all right, title, and interest, including the mineral estate, of the United States in the national forest system lands described in section 3. As consideration for such lands the Secretary is authorized to accept other lands, interests in lands, or cash, or any combination thereof, which in the case of a sale or exchange is at least equal in value to the lands being conveyed by the Secretary. In the case of conveyance by interchange the consideration must be approximately equal to the value of the lands being conveyed by the Secretary. The Secretary shall retain an interest in any lands conveyed to ensure protection of the public interest and public access, when he deems necessary.

Section 3 identifies the lands which may be sold, exchanged, or interchanged by the Secretary under section 2 as those the sale or exchange of which is not practicable under any other authority of the Secretary, those which the Secretary has determined to have a value of not more than $150,000, and those which are (1) parcels of 40 acres or less interspersed with or adjacent to mineral patents and which the Secretary has determined, because of size and location, are not subject to efficient administration; (2) parcels of 10 acres or less which are encroached upon by improvements occupied or used under claim or color of title by persons to whom no advance notice was given that the improvements encroached or would encroach upon such parcels, and also in good faith relied upon an erroneous survey, title search, or other land description indicating that there was no such encroachment; or (3) road rights-to-way reserved or acquired which are substantially surrounded by lands not owned by the United States and which are no longer needed by the United States subject to the first right of abutting landowners to acquire the rights-of-way.

Section 4 requires that persons to whom land is conveyed must bear all reasonable costs, as determined by the Secretary, of administration, survey, and appraisal incidental to the conveyance. In addition, any person to whom a right-of-way is conveyed is required to reimburse the United States for the value of any improvements to the right-of-way made by the United States. In cases where the Secretary determines it would be in the public interest to do so, the Secretary is authorized to waive payment of such incidental costs or reimbursement for any conveyance authorized by the Act. This section also provides that, in determining the value of any lands or interest in lands to be conveyed, the Secretary may exclude from such determination the value of any improvements to the lands made by persons other than the Government, when the Secretary determines that such exclusion would be in the public interest.

Section 5 provides that conveyance of any road rights-of-ways shall not be construed as permitting any designation, maintenance, or use of the rights-of-way for road or other purposes except to the extent permitted by State or local law.

Section 6 directs the Secretary to issue regulations to carry out the provisions of the Act, including specification of: (1) the criteria to be used in determining what constitutes the public interest; (2) the definition of and the procedure for determining "approximately equal value"; and (3) factors relating to location or size to be considered in determining the lands interspersed with mineral patents that are eligible to be conveyed under section 3 the bill.

Section 7 provides that nothing in the bill shall authorize conveyance of Federal lands within the National Wilderness Preservation System, National Wild and Scenic Rivers System, National Trails System, or National Monuments. Sale authority is not authorized within National Recreation Areas but other forms of conveyance are permitted.

Section 8 amends the Act of December 4, 1967, to authorize the Secretary to accept cash equalization payments, in connection with exchanges of national forest system lands, by State, county, or municipal governments where the lands offered in exchange do not equal the value of the Federal lands. Presently, that Act only authorizes cash equalization payments in connection with exchanges with public school districts. As reported, the bill provides that lands may be conveyed to States, counties or municipal governments wide this authority only if they were being utilized by those entities on the date of enactment of this Act. Lands so conveyed may only be used by such entities for the purposes they were being used before conveyance.

Cost and Budgetary Considerations

The following estimate of costs of this measure has been provided by the Congressional Budget Office.

U.S. Congress,
Congressional Budget Office,
Washington, D.C., July 1, 1982.

Hon. James A. McClure,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 705, a bill to authorize the Secretary of Agriculture to convey certain National Forest System lands, and for other purposes, as ordered by the Senate Committee on Energy and Natural Resources, June 30, 1982.

This bill authorizes the Secretary of Agriculture to sell, exchange, or interchange certain small parcels of National Forest Service land. The lands involved include parcels valued at a maximum of $150,000 which are: forty acres or less and are inefficient to manage because of location or size; ten acres or less and have been innocently encroached upon due to erroneous non-federal surveys; and unnecessary federally reserved road rights-of-way surrounded by non-federal lands. Based on information from the National Forest Service, it is estimated that

the value of the lands that will be sold or exchanged by the end of fiscal year 1986 is approximately $1.9 million (in current prices). Assuming the transactions will occur over the next five years and that 90 percent of these transactions are land sales (and 10 percent are land exchanges), receipts to the federal government resulting from enactment of this legislation will be approximately $0.2 million in fiscal year 1982, $0.3 million in fiscal year 1983, $0.6 million in fiscal year 1984, $0.6 million in fiscal year 1985, and $0.7 million in fiscal year 1986.

The bill also authorizes states, counties, and municipal governments to equalize land values with cash for certain proposed land exchanges with the Secretary of Agriculture. To be eligible for this provision, the federal land involved must not exceed eighty acres and must currently be used by the local governments involved. Based on information from the National Forest Service, net receipts to the federal government that will be realized as a result of enactment of this title will be less than $0.3 million per year.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN, *Director.*

EXECUTIVE COMMUNICATIONS

The pertinent legislative reports and communications received by the Committee from the Department of Agriculture setting forth Executive agency recommendations relating to S. 705 are set forth below:

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., June 30, 1982.

HON. JAMES A. MCCLURE,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: As you requested, here is our report on S. 705, a bill "To authorize the Secretary of Agriculture to convey certain National Forest System lands, and for other purposes," as reported by the Senate Agriculture Committee, April 19, 1982.

The Department of Agriculture recommends that S. 705 be enacted.

S. 705 would authorize the Secretary of Agriculture to sell, exchange, or interchange, all right, title and interest, including the mineral estate, to certain National Forest System lands when the Secretary determines it to be in the public interest. A quitclaim deed would convey the land sold, exchanged, or interchanged. Any conveyance could be made to a State or political subdivision of a State as well as to private parties. Payment for the lands could be in cash, interests in land, or other lands and would be of equal or approximately equal value.

The lands which would be sold, exchanged or interchanged are of three types: (1) tracts of 40 acres or less interspersed with or adjacent to patented mineral claims which cannot be efficiently administered; (2) parcels of 10 acres or less which are encroached upon by improvements occupied or used by persons who relied upon an erroneous sur-

vey, title search or land description and who had not been given advance notice that their improvements would encroach upon the Federal land; or (3) road rights-of-way, either reserved or acquired, substantially surrounded by privately owned lands and which are no longer needed by the United States. The tracts which would be disposed of could not have a value of more than $150,000. In determining value of the tract, the Secretary could waive the value of any improvements made by any person other than the Government.

S. 705 would require persons receiving these lands to bear the costs of conveyance unless waived by the Secretary. Conveyance of road rights-of-way would require reimbursement to the United States by the recipient for the value of any improvements made by the United States. The abutting landowners would be given the first opportunity to acquire the road rights-of-way. The bill would prohibit conveyance of any Federal lands within the National Wilderness Preservation System.

S. 705 would provide authority to convey three types of small, irregularly shaped tracts of National Forest System land. These are typically separate, isolated units having special management problems which impair efficient administration. Present authorities, including the General Exchange Act of March 20, 1922, are not adequate to handle the unique nature of these tracts. Administrative remedies, such as special use permits, do not provide a satisfactory long-term solution. S. 705 would provide authority to more efficiently administer National Forest System lands.

The mineral fractions are residual Federal lands remaining after the patenting of mineral claims in the Western States over the last century. Due to the manner in which the claiming occurred, the residual lands are of an infinite variety of sizes and shapes. Many of these lands came under the administrative responsibility of the Forest Service upon creation of the National Forests. Most of these lands are no longer held for their mineral values and are of little practical use for National Forest System purposes.

Encroachment, or good faith trespass, upon National Forest System land occurs when improvements are constructed or are being used on a parcel of land acquired in good faith by a private party, but which is later found to overlap Federal land. This overlap may occur due to an improper property line survey or an error in the title or land description. This has happened when private lands adjoining public lands are subdivided and sold. The trespass would be considered good faith if the private party had no knowledge that the improvements would encroach upon the Federal lands. There are an estimated 50,000 title claims cases existing on National Forest System lands—a large number of which involve good faith trespass due to faulty private surveys. These occur throughout the United States. These are generally of small size, most involve less than 1 acre.

The road rights-of-way exist as narrow strips of Federal land through private land. Most were created as exceptions to homestead patents in order to provide access to the homesteaded area or to the remaining public lands. Some were purchased by the Government in conjunction with the work of the Civilian Conservation Corps. Many of the roads no longer exist or were never built. The average size of the strips is 2 acres. They occur in the West, especially in Montana, Wyoming, Idaho, and Arizona.

Conveyance by interchange is a new concept of Federal land disposal. Interchange as proposed in S. 705 would be a special form of land transfer similar to exchange in which, for example, a landowner who might be involved in an occupancy trespass situation on adjoining Federal lands, could agree with the Federal Government to interchange titles to the small parcel of Federal land being occupied and a similar parcel of private land which he owns. The simple transaction, with conveyances at approximate value, would clear up the encroachment situation and would avoid the more costly and time consuming process normally associated with exchange. The expense to the landowner would be the cost of survey, if any, and deed preparation and filing. We would envision interchange as a supplement to the regular land exchange process, applicable to some of the cases encompassed by S. 705.

Section 8 of S. 705 would amend the Act of December 4, 1967 (81 Stat. 531) which authorizes the Secretary of Agriculture, when negotiating a land exchange with a public school district under the General Exchange Act of 1922, to accept cash in lieu of land for a portion or all of the value of the selected Federal land. This amendment would broaden the 1967 Act and authorize cash equalization in exchanges of National Forest System land with State and local government entities in addition to the present authority for public school districts. The authority provided by this section would not be limited to the specific types of National Forest System lands encompassed by S. 705. All land exchanges with States, counties and municipal governments, in addition to those with public school districts, would be affected by this section.

No additional appropriations would be required to administer the provisions of S. 705 nor would additional personnel be needed.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

JOHN R. BLOCK, *Secretary.*

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of the Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 705 as amended.

S. 705 is not a regulatory measure in the sense of imposing Government established standards or significant economic responsibilities on private individuals and businesses. Conveyance of Government land to private parties, or to State, county, or municipal governments under the legislation would be voluntary. Furthermore, there would be significant advantages expected to accrue to the private entities affected by the legislation in providing for the resolution of title claims through expedited administrative actions rather than through litigation or private relief legislation. Upon adoption of regulations by the Secretary establishing the procedures to be followed in making conveyances, the affected private entities would be free to choose whether or not to enter into a sale, exchange, or interchange with the Secretary.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little if additional paperwork would result from the enactment of S. 705.

Changes in Existing Law

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman) :

Act of December 4, 1967

AN ACT To facilitate exchanges of land under the Act of March 20, 1922 (42 Stat. 465), for use for public schools, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever an exchange of land is proposed by a *State, county, or municipal government or* public school district or other public school authority under the Act of March 20, 1922 (42 Stat. 465), as amended (16 U.S.C. 485, 486), or other authority under which the Secretary of Agriculture is authorized to exchange national forest lands or other lands administered by the Forest Service, if the *State, county, or municipal government or* public school authority proposing the exchange has insufficient land to offer, the exchange may be completed upon deposit with the Secretary of Agriculture of a portion or all of the value of the selected land. Any amount so deposited shall be covered into a special fund in the Treasury which when appropriated shall be available until expended by the Secretary of Agriculture for the acquisition of lands in the same State as the selected lands and which are determined by him to be suitable for the same purposes as the selected lands. Lands so acquired shall have the same status and shall be subject to the same laws, regulations, and rules as the selected lands.

The provisions of this Act shall not be applicable to the conveyance in exchange of more than eighty acres to any one *State, county, or municipal government or* public school district or other public school authority. *Lands may be conveyed to any State, county, or municipal government pursuant to this Act only if the lands were being utilized by such entities on the date of enactment of this sentence. Lands so conveyed may be used only for the purposes for which they were being used prior to conveyance.*

○

II

Calendar No. 700

97TH CONGRESS
2D SESSION

S. 705

[Report No. 97–332]

[Report No. 97–490]

To authorize the Secretary of Agriculture to convey certain National Forest System lands, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 12 (legislative day, FEBRUARY 16), 1981

Mr. DOMENICI (for himself, Mr. HATFIELD, and Mr. GARN) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

APRIL 19 (legislative day, APRIL 13), 1982

Reported by Mr. HELMS, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

MAY 27 (legislative day, MAY 25, 1982

Referred to the Committee on Energy and Natural Resources, with the condition that, if the Energy Committee has not reported the bill by July 2, 1982, it shall be automatically discharged from further consideration of the bill

JULY 1 (legislative day, JUNE 8), 1982

Reported by Mr. MCCLURE, with amendments

[Omit the part struck through and insert the parts printed in italic and boldface]

A BILL

To authorize the Secretary of Agriculture to convey certain National Forest System lands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, ~~That the Secretary of Agriculture (hereinafter referred to as the "Secretary") is authorized, when the Secretary determines it to be in the public interest—~~

~~(1) to sell or exchange, by quitclaim deed, all right, title and interest of the United States in and to National Forest System lands described in section 2; and~~

~~(2) to accept, as consideration for the lands sold or exchanged, other lands, interests in lands, or cash payment, or any combination of such forms of consideration, equal in value to the fair market value of the lands, including the mineral estate, sold or exchanged by the Secretary.~~

~~The Secretary shall insert in any such quitclaim deed such terms, covenants, conditions, and reservations as the Secretary deems necessary to ensure protection of the public interest, including protection of the scenic, wildlife and wilderness values of the National Forest System and provision for appropriate public access to and use of lands within the System.~~

~~SEC. 2. The National Forest System lands which may be sold or exchanged under this Act are those the sale or exchange of which is not practicable under any other authority of the Secretary and which are—~~

~~(1) parcels of forty acres or less which are inter-~~
~~spersed with or adjacent to mineral patents, which are~~
~~determined by the Secretary, because of location or~~
~~size, not to be subject to efficient administration, and~~
~~which have a fair market value, as determined by the~~
~~Secretary through appraisal within one year before or~~
~~after the date application for sale or exchange is made~~
~~to the Secretary, of not more than $150,000;~~

~~(2) parcels of ten acres or less which are en-~~
~~croached upon by improvements occupied or used~~
~~under claim or color of title by persons to whom no~~
~~advance notice was given that the improvements en-~~
~~croached or would encroach upon such parcels, and~~
~~who in good faith relied upon an erroneous Federal~~
~~survey, title search or other land description indicat-~~
~~ing that there was not such encroachment; and~~

~~(3) road rights-of-way, reserved or acquired,~~
~~which are substantially surrounded by lands not owned~~
~~by the United States and which are no longer needed~~
~~by the United States, subject to the first right of abut-~~
~~ting landowners to acquire such rights-of-way.~~

~~SEC. 3. Any person to whom lands are conveyed pursu-~~
~~ant to this Act shall bear all reasonable costs of administra-~~
~~tion, survey and appraisal incidental to such conveyance, as~~
~~determined by the Secretary, except in those cases in which~~

~~the Secretary determines that it would be consistent with the public interest to waive payment of such costs by such person. In the case of road rights-of-way conveyed pursuant to this Act, the person to whom the right-of-way is conveyed shall reimburse the United States for the value of any improvements to such right-of-way which may have been made by the United States.~~

~~SEC. 4. Conveyance of any road rights-of-way under this Act shall not be construed as permitting any designation, maintenance, or use of such rights-of-way for road or other purposes except to the extent permitted by State or local law and under conditions imposed by such law.~~

~~SEC. 5. In carrying out the land exchanges authorized in this Act the Secretary is authorized to use the procedures of the Act entitled "An Act to facilitate exchanges of land under the Act of March 20, 1922 (42 Stat. 465), for use for public schools, and for other purposes", approved December 4, 1967 (Public Law 90-171; 81 Stat. 531).~~

~~SEC. 6. For purposes of this Act, the word "person" includes any State or any political subdivision or entity thereof.~~

~~SEC. 7. The Secretary shall issue regulations to carry out the provisions of this Act, including specification of—~~

~~(1) criteria which shall be used in making the determination as to what constitutes the public interest; and~~

~~(2) factors relating to location or size which shall be considered in connection with determining the lands to be sold or exchanged under clause (1) of section 2.~~

~~SEC. 8. Nothing in this Act shall authorize conveyance of Federal lands within the National Wilderness Preservation System.~~

That for purposes of this Act—

(1) the term "person" includes any State or any political subdivision or entity thereof;

(2) the term "interchange" means a land transfer in which the Secretary and another person exchange titles to lands or interests in lands **of approximately equal value where the Secretary finds that such a value determination can be made without a formal appraisal and** *under such regulations as the Secretary may prescribe; and*

(3) the term "Secretary" means the Secretary of Agriculture of the United States.

SEC. 2. The Secretary is authorized, when the Secretary determines it to be in the public interest—

(1) to sell, exchange, or interchange by quitclaim deed, all right, title, and interest, including the mineral

estate, of the United States in and to National Forest System lands described in section 3; and

(2) to accept as consideration for the lands sold, exchanged, or interchanged other lands, interests in lands, or cash payment, or any combination of such forms of consideration, which, in the case of conveyance by sale or exchange, is at least equal in value, including the mineral estate, or, in the case of conveyance by interchange, is of ~~approximate value,~~ **approximately equal value,** *including the mineral estate, to the lands being conveyed by the Secretary.* **The Secretary shall insert in any such quitclaim deed such terms, convenants, conditions, and reservations as the Secretary deems necessary to ensure protection of the public interest, including protection of the scenic, wildlife, and recreation values of the National Forest System and provision for appropriate public access to and use of lands within the System. The preceeding sentence shall not be applicable to deeds issued by the Secretary to lands outside the boundary of units of the National Forest System.**

SEC. 3. The National Forest System lands which may be sold, exchanged, or interchanged under this Act are those

the sale or exchange of which is not practicable under any other authority of the Secretary, which have a value as determined by the Secretary of not more than $150,000, and which are—

(1) parcels of forty acres or less which are interspersed with or adjacent to lands which have been transferred out of Federal ownership under the mining laws and which are determined by the Secretary, because of location or size, not to be subject to efficient administration;

(2) parcels of ten acres or less which are encroached upon by improvements occupied or used under claim or color of title by persons to whom no advance notice was given that the improvements encroached or would encroach upon such parcels, and who in good faith relied upon an erroneous survey, title search, or other land description indicating that there was not such encroachment; or

(3) road rights-of-way, reserved or acquired, which are substantially surrounded by lands not owned by the United States and which are no longer needed by the United States, subject to the first right of abutting landowners to acquire such rights-of-way.

SEC. 4. Any person to whom lands are conveyed under this Act shall bear all reasonable costs of administration,

survey, and appraisal incidental to such conveyance, as determined by the Secretary. In determining the value of any lands or interest in lands to be conveyed under this Act, the Secretary may, in those cases in which the Secretary determines it would be ~~consistent with the public interest,~~ **in the public interest,** *exclude from such determination the value of any improvements to the lands made by any person other than the Government. In the case of road rights-of-way conveyed under this Act, the person to whom the right-of-way is conveyed shall reimburse the United States for the value of any improvements to such right-of-way which may have been made by the United States. The Secretary may, in those cases in which the Secretary determines that it would be ~~consistent with the public interest,~~* **in the public interest** *waive payment by any person of costs incidental to ~~such conveyance~~* **any conveyance authorized by this Act** *or reimbursement by any person for the value of improvements to rights-of-way otherwise required by this section.*

SEC. 5. Conveyance of any road rights-of-way under this Act shall not be construed as permitting any designation, maintenance, or use of such rights-of-way for road or other purposes except to the extent permitted by State or local law and under conditions imposed by such law.

SEC. 6. The Secretary shall issue regulations to carry out the provisions of this Act, including specification of—

(1) criteria which shall be used in making the determination as to what constitutes the public interest;

(2) the definition of and the procedure for determining ~~"approximate value";~~ **"approximately equal value"** *and*

(3) factors relating to location or size which shall be considered in connection with determining the lands to be sold, exchanged, or interchanged under clause (1) of section 3.

SEC. 7. Nothing in this Act shall authorize conveyance of Federal lands within the National Wilderness Preservation ~~System.~~ **System, National Wild and Scenic Rivers System, National Trails System, or National Monuments. Nothing in this Act shall authorize sale of Federal lands, within National Recreation Areas.**

~~SEC. 8.~~ **SEC. 8. (a)** *The Act of December 4, 1967 (81 Stat. 531), is amended by inserting before the phrase "public school district" wherever it appears, and before the phrase "public school authority" the second time it appears, the words "State, county, or municipal government or".*

(b) The Act of December 4, 1967 (81 Stat. 531), is further amended by adding the following at the end thereof: "Lands may be conveyed to any State, county, or municipal government pursuant to this

Act only if the lands were being utilized by such entities on the date of enactment of this sentence. Lands so conveyed may be used only for the purposes for which they were being used prior to co veyance.".

FLOOR CONSIDERATION AND PASSAGE

- o Senate
- o House

CONVEYANCE OF CERTAIN NATIONAL FOREST SYSTEM LANDS

Mr. BAKER. Mr. President, Calendar Order 700, S. 705, has been cleared on this side of the aisle for action at this time, and if the minority leader has no objection, I ask the Chair to lay before the Senate S. 705.

Mr. ROBERT C. BYRD. Mr. President, there is no objection.

The Senate proceeded to consider the bill (S. 705) to authorize the Secretary of Agriculture to convey certain National Forest System lands, and for other purposes, which had been reported from the Committee on Agriculture, Nutrition, and Forestry with an amendment to strike out all after the enacting clause, and insert the following:

That for purposes of this Act—

(1) the term "person" includes any State or any political subdivision or entity thereof;

(2) the term "interchange" means a land transfer in which the Secretary and another person exchange titles to lands or interest in lands under such regulations as the Secretary may prescribe; and

(3) the term "Secretary" means the Secretary of Agriculture of the United States.

SEC. 2. The Secretary is authorized, when the Secretary determines it to be in the public interest—

(1) to sell, exchange, or interchange by quitclaim deed, all right, title, and interest, including the mineral estate, of the United States in and to National Forest System lands described in section 3; and

(2) to accept as consideration for the lands sold, exchanged, or interchanged other lands, interests in lands, or cash payment, or any combination of such forms of consideration, which, in the case of conveyance by sale or exchange, is at least equal in value, including the mineral estate, or, in the case of conveyance by interchange, is of value, including the mineral estate, to the land being conveyed by the Secretary.

SEC. 3. The National Forest System lands which may be sold, exchanged, or interchanged under this Act are those the sale or exchange of which is not practicable under any other authority of the Secretary, which have a value as determined by the Secretary of not more that $150,000, and which are—

(1) parcels of forty acres or less which are interspersed with or adjacent to lands which have been transferred out of Federal ownership under the mining laws and which are determined by the Secretary, because of location or size, not to be subject to efficient administration;

(2) parcels of ten acres or less which are encroached upon by improvements occupied or used under claim or color of title by persons to whom no advance notice was given that the improvements encroached or would encroach upon such parcels, and who in good faith relied upon an erroneous survey, title search, or other land description that there was not such encroachment; or

(3) road rights-of-way, reserved or acquired, which are substantially surrounded by lands not owned by the United States and which are no longer needed by the United States, subject to the first right of abutting landowners to acquire such rights-of-way.

SEC. 4. Any person to whom lands are conveyed under this Act shall bear all reasonable costs of administration, survey, and appraisal incidental to such conveyance, as determined by the Secretary. In determining the value of any lands or interest in lands to be conveyed under this Act, the Secretary may, in those cases in which the Secretary determines it would be consistent with the public interest, exclude from such determination the value of any improvements to the lands made by any person other than the Government. In the case of road rights-of-way conveyed under this Act, the person to whom the right-of-way is conveyed shall reimburse the United States for the value of any improvements to such right-of-way which may have been made by the United States. The Secretary may, in those cases in which the Secretary determines that it would be consistent with the public interest, waive payment by any person of costs incidental to such conveyance or reimbursement by any person for the value of improvements to rights-of-way otherwise required by this section.

SEC. 5. Conveyance of any road rights-of-way under this Act shall not be construed as permitting any designation, maintenance, or use of such rights-of-way for road or other purposes except to the extent permitted by State or local law and under conditions imposed by such law.

SEC. 6. The Secretary shall issue regulations to carry out the provisions of this Act, including specification of—

(1) criteria which shall be used in making the determination as to what constitutes the public interest;

(2) the definition of and the procedure for determining "approximate value"; and

(3) factors relating to location or size which shall be considered in connection with determining the lands to be sold, exchanged, or interchanged under clause (1) of section 3.

SEC. 7. Nothing in this Act shall authorize conveyance of Federal lands within the National Wilderness Preservation System.

SEC. 8. The Act of December 4, 1967 (81 Stat. 531), is amended by inserting before the phrase "public school district" wherever it appears, and before the phrase "public school authority" the second time it appears, the words "State, county, or municipal government or", and from the Committee on Energy and Natural Resources with amendments to the reported amendment of the Committee on Agriculture, Nutrition, and Forestry, as follows:

On page 5, line 15, after "lands", insert the following: "of approximately equal value where the Secretary finds that such a value determination can be made without a formal appraisal and."

On page 6, line 9, strike "approximate value,", and insert "approximately equal value,";

On page 6, after line 11, insert the following: "The Secretary shall insert in any such quit-claim deed such terms, convenants, conditions, and reservations as the Secretary deems necessary to ensure protection of the public interest, including protection of the scenic, wildlife, and recreation values of the National Forest System and provision for appropriate public access to and use of lands within the System. The preceding sentence shall not be applicable to deeds issued by the Secretary to lands outside the boundary of units of the National Forest System.".

On page 8, line 5, strike "consistent with the public interest", and insert "in the public interest,";

On page 8, beginning on line 13, strike "consistent with the public interest.", and insert "in the public interest,";

On page 8, beginning on line 15, strike "such conveyance", and insert "any conveyance authorized by this Act";

On page 9, line 4, strike "'approximate value'" and insert "'approximately equal value'";

On page 9, line 12, strike "System.", and insert the following: "System, National Wild and Scenic Rivers System, National Trails System, or National Monuments. Nothing in this Act shall authorize sale of Federal lands, within National Recreation Areas.".

On page 9, line 17, strike "Sec. 8.", and insert "Sec. 8. (a)";

On page 9, after line 21, insert the following: "(b) The Act of December 4, 1967 (81 Stat. 531), is further amended by adding the following at the end thereof: 'Lands may be conveyed to any State, county, or municipal government pursuant to this Act only if the lands were being utilized by such entities on the date of enactment of this sentence. Lands so conveyed may be used only for the purposes for which they were being used prior to conveyance.'".

Mr. DOMENICI. Mr. President, S. 705, the Small Tracts Act is long overdue because the problem it addresses grows with each passing day.

The problem is one that involves disputes between the U.S. Forest Service and adjacent landowners. These disputes have occurred as the Federal Government has engaged in resurveying of the public lands of this Nation. Those surveys are conducted today using the most modern technological equipment available. However, they have turned up numerous boundary discrepancies across the United States. This is not simply a New Mexico problem nor just a California problem. It exists across our Nation and currently the U.S. Forest Service has some 60,000 pending cases involving adjacent landowners who thought they owned land that they now find has been placed by these new surveys within the boundaries of our national forests.

I want to make it very clear that through absolutely no fault of their own these property owners now find their titles to deeds clouded and have seen, in some cases, improvements to their property now placed within the boundaries of the national forests. It is clear that these citizens relied on the only surveys that were available, those that had been done to the best degree possible years ago with the then-existing surveying equipment. Everyone, including the U.S. Government, thought those surveys were correct.

Now, if these disputes had occurred between two private landowners, the individual would have some recourse through the doctrine of adverse possession. However, under our laws, an individual cannot invoke that doctrine against the U.S. Government.

So what are the individual's options?

Of course the individual can perhaps sue the U.S. Government. That type of action is, needless to say, long and costly with no guarantee of vindication in our courts. And in most cases, the amount of land involved in these disputes is less than 10 acres.

Another method of satisfaction to the individuals involved is the use of legislative remedy or private relief bills which allow the individual to purchase the dispusted land back from the Federal Government or trade it back for an equal value.

Can you imagine some 60,000 individual relief bills coming before the U.S. Senate in trying to solve this problem?

I think S. 705 provides us with a solution to this dilemma. It also provides a form of relief to countless thousands of property owners across the Nation who just want this cloud of ownership lifted.

Simply stated, the Small Tracts Act allows the Forest Service at the local level to enter into negotiations with these individuals and, further, it gives the U.S. Forest Service the authorization to clear title.

I would point out that we have placed a cap on this legislation and only parcels of 10 acres or less can be returned to the property owners. It seems to me that the cap insures the fact that this act will not be abused. Furthermore, with this cap we allow the Forest Service to administratively resolve 99 percent of the existing disputes.

I think this bill, while not addressing all of issues involved with the Government's land survey problems, goes a long way in resolving the issue for thousands of our citizens. It is a fair bill that is supported by the administration, by the U.S. Forest Service, by countless organizations and by thousands of individual Americans.

I would point out that the U.S. Government has to some extent just begun its resurveying of Federal land across the United States. This means that today we may have 60,000 cases of boundary disputes and tomorrow we could easily have 100,000. Unless the Congress acts we are doing an extreme disservice to countless thousands of our citizens.

A similar measure is currently moving its way through the House of Representatives and, I am confident that once the U.S. Senate acts, the Members of the House will expedite this legislation.

Mr. HUDDLESTON. Mr. President, I support S. 705 as reported by the Senate Committee on Agriculture, Nutrition, and Forestry and the Committee on Energy and Natural Resources.

S. 705 authorizes the Secretary of Agriculture to convey certain small tracts of national forest lands to individuals and local governments. Presently, the Forest Service is responsible for managing many thousands of very small and irregularly shaped lots for which proper management is impractical. An example of such a parcel of land is a road right-of-way several yards wide and 33 miles long. By allowing the Secretary to sell or exchange these small tracts of land, S. 705 would enable the Secretary to better manage national forest lands.

In addition, some parcels of national forest land have been innocently encroached upon because of inaccurate surveys taken many years ago. S. 705 would provide a method of resolving innocent encroachment cases equitably and avoid lengthy and costly litigation for private landowners and the Government.

The amendments included by the Committee on Energy and Natural Resources would provide additional protection of the public interest. The committee's amendments specify that scenic, wildlife, and recreation values be included in assessing the value of small tracts to be conveyed.

I urge my colleagues to join me in supporting S. 705.

Mr. BAKER. Mr. President, there are amendments from the Committee on Agriculture as well as from the Committee on Energy and Natural Resources, is that correct?

The PRESIDING OFFICER. The Senator is correct.

The question is on agreeing to the committee amendments.

The committee amendments were agreed to.

The PRESIDING OFFICER. If there are no further amendments, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AUTHORIZING SECRETARY OF AGRICULTURE TO CONVEY CERTAIN NATIONAL FOREST SYSTEM LANDS

Mr. SEIBERLING. Mr. Speaker, I ask unanimous consent that the Committee on Interior and Insular Affairs and the Committee on Agriculture be discharged from further consideration of the Senate bill (S. 705), to authorize the Secretary of Agriculture to convey certain National Forest System lands, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER. Is the objection to the request of the gentleman from Ohio?

Mr. CHENEY. Mr. Speaker, reserving the right to object, I do so to yield to the gentleman from Ohio (Mr. SEIBERLING).

Mr. SEIBERLING. I thank the gentleman for yielding.

Mr. Speaker, this bill is sometimes referred to as the small tracts bill. It passed the Senate on August 19. It would authorize the Secretary of Agriculture to resolve a number of management problems by making conveyances or exchanges of certain specified types of small tracts of land within the national forest system.

It is an entirely noncontroversial bill. It is sought by the administration. I have talked to the ranking minority member on the Public Lands Subcommittee. I have talked to the gentleman from Wyoming. I believe there are no objections to this bill on any side. I would hope that we can dispose of it expeditiously at this point.

The bill is similar to legislation which passed the 96th Congress but was pocket vetoed by President Carter because of objections to a nonrelated Senate amendment which is not included in this version. The bill is carefully drawn and, while limited in its scope, would enable an efficient resolution of many genuine problems. I urge its passage and include my remarks at this point in the RECORD:

PURPOSE

The purpose of S. 705 is to enable the Secretary of Agriculture to more efficiently and flexibly manage the National Forests by providing additional authority for the transfer out of federal ownership of certain limited and specific categories of national forests lands, without case-by-case authorizations from the Congress.

BACKGROUND AND NEED

There are an estimated 200,000 tracts of Federal land the size, shape, or location of which makes them impracticable to administer efficiently as units of the national forest system. They are often isolated or too small to justify the expense and time required in land management activities. They may be occupied in trespass by adjoining landowners. These tracts can generally be grouped into one of three readily defined categories: (1) irregularly shaped tracts of 40 acres or less that are interspersed with or adjacent to mineral claims, (2) tracts of 10 acres or less that are encroached upon by private parties because of surveying, titling, or land description errors, or (3) road rights-of-way that are owned by the United States but are no longer needed. Each type of tract is more specifically described below.

Mineral Tracts.—The mineral fractions were created 75 to 100 years ago through patenting of mining claims on the Western public lands. Because of the way the claiming occurred, the residual tracts owned by the Federal Government are of an infinite variety of sizes and shapes. Some may be as small as 0.2 acre. Many of the intermingled, unpatented public lands came under the administrative responsibility of the Forest Service upon creation of the national forests but are of such small size or are located in such a way as to be of little practical use for National Forest System purposes.

Most of the adjoining mineral patents are no longer held for their mineral values. They may support ranching, industrial plants, irrigation sites and water power facilities, utility lines, roads, and iptensive recreation sites. Recently, some of the patented lands have been subdivided into vacation homesites.

Encroachment.—Innocent occupancy, or encroachment, upon national forest system lands occurs when improvements are constructed or are being used on a parcel of land acquired in good faith by a private party which is later found to overlap Federal land. This usually happens as a result of an improper property line survey, by either private or public surveyors, or an error in the title or land description. While there are a few known instances where Federal survey errors are the cause of such encroachments, the great bulk of the title claim cases existing on national forest system lands involves problems resulting from private surveys. The error giving rise to the encroachment is frequently not discovered until the public land is later surveyed and marked. The resulting trespass is considered to be in good

faith if the private party had no knowledge that the improvements would encroach upon the Federal lands. The claims generally involve parcels of small size, frequently less than one acre, but constitute a major portion of the estimated 50,000 title claim cases existing on national forest system lands throughout the United States. There would be a distinct advantage to the Government to have the possibility of litigation removed from these potential title claim cases.

Road Right-Of-Way.—These are narrow strips of Federal lands that pass through private land. Most were created as exceptions to homestead patents in order to provide access to the homesteaded area or to remaining Federal lands. Some were purchased by the Government in conjunction with the work of the Civilian Conservation Corps. Many of the roads no longer exist or were never built, and the rights-of-way are no longer needed for national forest system purposes. The average size of these rights-of-way is two acres. They occur in the West, especially in Montana, Wyoming, Idaho, and Arizona.

These three types of small irregularly shaped tracts of national forest system land create problems for both the Federal land manager and adjacent private party owners. Administrative remedies, while generally applicable are not in most cases a desirable solution. A special use permit may be granted. The permit acknowledges the occupancy and allows it to continue for a specified period. This period is usually sufficient to amortize any improvements to the property. The permit is then cancelled and the improvements must be removed. A land exchange may also be made under which the Secretary may accept lands in exchange for the small tracts of the type described above. However, individual exchanges under current authority are lengthy and expensive. They are not usually satisfactory in the case of small acreages and irregularly shaped tracts.

Private legislation has not been successful in only a small number of cases. It is a difficult, time-consuming and costly process with uncertain results. A general legislative solution is thus considered preferable and appears to be the only realistic solution to the massive backlog of these types of title claim cases. S. 705 would provide the Forest Service with authority to administer an efficient system for resolving these claims in a manner consistent with protecting the public interest.

The proposed legislation would also address a different, but related, matter involving national forest system lands. The act of December 4, 1967, authorizes exchanges of national forest system lands with public school districts where the lands offered in exchange do not equal the value of the Federal lands. In such cases, the act authorizes the Secretary to accept cash from the public school district to equalize the value of the exchange. Broadening this cash equalization feature to include States, county, and municipal governments would recognize that these entities may have the same difficulty in making equivalent land exchanges as do public school districts and would allow for the completion of desirable land exchanges where sufficient suitable land is not available. In addition to specifically identified land exchanges, there are approximately 10,000 cases where these governmental units occupy a tract of national forest system land under a special use permit in order to carry out a specific function, such as highway maintenance facilities or forest fire lookout towers. Many of these could appropriately be transferred to the local governmental unit under a cash equalization exchange program.

SECTION-BY-SECTION ANALYSIS

Section 1 defines the terms "person", "interchange", and "Secretary". The term "person" includes States or any political subdivisions or entities thereof, such as county and municipal governments, independent school districts and similar entities. The term "interchange" means a land transfer involving the change of titles to or interests in lands between the Secretary and another person under such regulations as the Secretary may prescribe.

Section 2 authorizes the Secretary of Agriculture, when in the public interest, to sell, exchange, or interchange by quitclaim deed, all right, title, and interest, including the mineral estate, of the United States in the national forest system lands described in section 3. As consideration for such lands the Secretary is authorized to accept other lands, interest in lands, or cash, or any combination thereof, which in the case of a sale or exchange is at least equal in value to the lands being conveyed by the Secretary. In the case of conveyance by interchange the consideration must be of approximate value to the lands being conveyed by the Secretary.

Section 3 identifies the lands which may be sold, exchanged, or interchanged by the Secretary under section 2 as those the sale or exchange of which is not practicable under any other authority of the Secretary, which the Secretary has determined to have a value of not more than $150,000, and which are (1) parcels of 40 acres or less interspersed with or adjacent to mineral patents and which the Secretary has determined, because of size arid location, are not subject to efficient administration; (2) parcels of 10 acres or less which are encroached upon by improvements occupied or used under claim or color of title by persons to whom no advance notice was given that the improvements encroached or would encroach upon such parcels, and who in good faith relied upon an erroneous survey, title search, or other land description indicating that there was no such encroachment; or (3) road rights-of-way reserved or acquired which are substantially surrounded by lands not owned by the United States and which are no longer needed by the United States subject to the first right of abutting landowners to acquire the rights-of-way.

Section 4 requires that persons to whom land is conveyed must bear all reasonable costs, as determined by the Secretary, of administration, survey, and appraisal incidental to the conveyance. In addition, any person to whom a right-of-way is conveyed is required to reimburse the United States for the value of any improvements to the right-of-way made by the United States. In cases where the Secretary determines it would be consistent with the public interest to do so, the Secretary is authorized to waive payment of such incidental costs or reimbursement for such improvements to rights-of-way. This section also provides that, in determining the value of any lands or interest in lands to be conveyed, the Secretary may exclude from such determination the value of any improvements to the lands made by persons other than the Government, when the Secretary determines that such exclusion would be consistent with the public interest.

Section 5 provides that conveyance of any road rights-of-way shall not be construed as permitting any designation, maintenance, or use of the rights-of-way for road or other purposes except to the extent permitted by State or local law.

Section 6 directs the Secretary to issue regulations to carry out the provisions of the bill, including specification of: (1) the criteria to be used in determining what constitutes the public interest; (2) the definition of and the procedure for determining "approximate value"; and (3) factors relating to location or size to be considered in determining the lands interspersed with mineral patents that are eligible to be conveyed under the bill. With regard to this section, the framers of the bill intend that the Secretary take care to promulgate regulations which will confine the new authority provided by this bill to its intended limits. In particular, it is essential that the authority provided to dispose of "mineral fractions", those tracts of Federal land remaining after the patenting of public domain lands under the mining laws, not be interpreted too broadly. This authority is not intended to allow the disposal of National Forest System land except for reasons specifically related to location, size or efficient administration. Therefore, in the regulations the Secretary must adopt stringent criteria to guide the disposal of mineral fractions. The following criteria are suggested to guide the Department of Agriculture in this regard:

1. Fractions qualifying for disposal be only those surrounded by lands patented under the mining laws.

2. To qualify, there must be good evidence that the Federal lands being considered for disposal are or would be occupied or used by adjoining private parties.

3. The combined acreage of fractions sold in any one sale (whether the fractions are sold separately or aggregated for purposes of sale) should generally not exceed 40 acres.

Furthermore, it is our intent that the regulations in general make sure that the authority provided by this legislation is not to be construed to enable private parties, singly or acting together, to block or unduly restrict public access to National Forest Lands, to monopolize or unduly restrict access to water supplies or other resources of the National Forests now open to use by the public, or to establish new, extensive inholdings which would present management problems for the U.S. Forest Service.

It is the clear understanding of those of us in the House who are familiar with the purposes of the bill that the regulations will assure that the discretionary authority provided by this bill (including the authority to waive the payment of various costs) will be exercised only in those de *minimis* cases (which must be evaluated individually) for which it has been designed, and not as a means for a general disposal of National Forest lands for purposes not directly related to improved management or resolution of specific problems or for the enhancement of federal revenues.

Section 7 provides that nothing in the bill shall authorize conveyance of Federal lands within the National Wilderness Preservation System, the National Wild and Scenic Rivers System, the National Trails System, National Monuments, or National Recreation Areas.

Section 8 amends the act of December 4, 1967, to authorize the Secretary to accept cash equalization payments, in connection with exchanges of national forest system lands, by State, county, or municipal governments where the lands offered in exchange do not equal the value of the Federal lands. Presently, that act only authorizes cash equalization payments in connection with exchanges with public school districts.

COST AND BUDGET ACT COMPLIANCE

S. 705 authorizes no appropriations, and should have no discernible impact on the Federal budget; any likely impact would probably be in the form of reduced costs.

LEGISLATIVE HISTORY

Legislation similar to S. 705 was passed by both the House and Senate in the 96th Congress, but was subjected to a pocket veto because of Administration objections to a nongermane Senate amendment. S. 705 passed the Senate on August 19, 1982. The Subcommitee on Public Lands and National Parks held a hearing on the bill on December 2, 1982.

Mr. CHENEY. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Ohio (Mr. SEIBERLING)?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 705

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That for the purposes of this Act—

(1) the term "person" includes any State or any political subdivision or entity thereof;

(2) the term "interchange" means a land transfer in which the Secretary and another person exchange titles to lands or interests in lands of approximately equal value where the Secretary finds that such a value determination can be made without a formal appraisal and under such regulations as the Secretary may prescribe; and

(3) the term "Secretary" means the Secretary of Agriculture of the United States.

SEC. 2. The Secretary is authorized, when the Secretary determines it to be in the public interest—

(1) to sell, exchange, or interchange by quitclaim deed, all right, title, and interest, including the mineral estate, of the United States in and to National Forest System lands described in section 3; and

(2) to accept as consideration for the lands sold, exchanged, or interchanged other lands, interests in lands, or cash payment, or any combination of such forms of consideration, which, in the case of conveyance by sale or exchange, is at least equal in value, including the mineral estate, or, in the case of conveyance by interchange, is of approximately equal value, including the mineral estate, to the lands being conveyed by the Secretary. The Secretary shall insert in any such quitclaim deed such terms, convenants, conditions, and reservations as the Secretary deems necessary to ensure protection of the public interest, including protection of the scenic, wildlife, and recreation values of the National Forest System and provision for appropriate public access to and use of lands within the System. The preceding sentence shall not be applicable to deeds issued by the Secretary to lands outside the boundary of units of the National Forest System.

SEC. 3. The National Forest System lands which may be sold, exchanged, or interchanged under this Act are those the sale or exchange of which is not practicable under any other authority of the Secretary, which have a value as determined by the Secretary of not more than $150,000, and which are—

(1) parcels of forty acres or less which are interspersed with or adjacent to lands which have been transferred out of Federal ownership under the mining laws and which are determined by the Secretary, because of location or size, not to be subject to efficient administration;

(2) parcels of ten acres or less which are encroached upon by improvements occupied or used under claim or color of title by persons to whom no advance notice was given that the improvements encroached or would encroach upon such parcels, and who in good faith relied upon an erroneous survey, title search, or other land description indicating that there was no such encroachment; or

(3) road rights-of-way, reserved or acquired, which are substantially surrounded by lands not owned by the United States and which are no longer needed by the United States, subject to the first right of abutting landowners to acquire such rights-of-way.

SEC. 4. Any person to whom lands are conveyed under this Act shall bear all reasonable costs of administration, survey, and appraisal incidental to such conveyance, as determined by the Secretary. In determining the value of any lands or interest in lands to be conveyed under this Act, the Secretary may, in those cases in which the Secretary determines it would be in the public interest, exclude from such determination the value of any improvements to the lands made by any person other than the Government. In the case of road rights-of-way conveyed under this Act, the person to whom the right-of-way is conveyed shall reimburse the United States for the value of any improvements to such right-of-way which may have been made by the United States. The Secretary may, in those cases in which the Secretary determines that it would be in the public interest waive payment by any person of costs incidental to any conveyance authorized by this Act or reimbursement by any person for the value of improvements to rights-of-way otherwise required by this section.

SEC. 5. Conveyance of any road rights-of-way under this Act shall not be construed as permitting any designation, maintenance, or use of such rights-of-way for road or other purpose except to the extent permitted by State or local law and under conditions imposed by such law.

SEC. 6. The Secretary shall issue regulations to carry out the provisions of this Act, including specification of—

(1) criteria which shall be used in making the determination as to what constitutes the public interest;

(2) the definition of and the procedure for determining "approximately equal value" and

(3) factors relating to location or size which shall be considered in connection with determining the lands to be sold, exchanged, or interchanged under clause (1) of section 3.

SEC. 7. Nothing in this Act shall authorize conveyance of Federal lands within the National Wilderness Preservation System, National Wild and Scenic Rivers System, National Trails System, or National Monuments. Nothing in this Act shall authorize sale of Federal lands, within National Recreation Areas.

SEC. 8. (a) The Act of December 4, 1967 (81 Stat. 531), is amended by inserting before the phrase "public school district" wherever it appears, and before the phrase "public school authority" the second time it appears, the words "State, county, or municipal government or".

(b) The Act of December 4, 1967 (81 Stat. 531), is further amended by adding the following at the end thereof: "Lands may be conveyed to any State, county, or municipal government pursuant to this Act only if the lands were being utilized by such entities on the date of enactment of this sentence. Lands so conveyed may be used only for the purposes for which they were being used prior to conveyance.".

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SEIBERLING. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on S. 705.

The SPEAKER. Is there objection to the request of the gentleman from Ohio?

There was no objection.

THE ENROLLED BILL AND THE USDA REPORT

Ninety-seventh Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the twenty-fifth day of January, one thousand nine hundred and eighty-two

An Act

To authorize the Secretary of Agriculture to convey certain National Forest System lands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for purposes of this Act—

(1) the term "person" includes any State or any political subdivision or entity thereof;

(2) the term "interchange" means a land transfer in which the Secretary and another person exchange titles to lands or interests in lands of approximately equal value where the Secretary finds that such a value determination can be made without a formal appraisal and under such regulations as the Secretary may prescribe; and

(3) the term "Secretary" means the Secretary of Agriculture of the United States.

SEC. 2. The Secretary is authorized, when the Secretary determines it to be in the public interest—

(1) to sell, exchange, or interchange by quitclaim deed, all right, title, and interest, including the mineral estate, of the United States in and to National Forest System lands described in section 3; and

(2) to accept as consideration for the lands sold, exchanged, or interchanged other lands, interests in lands, or cash payment, or any combination of such forms of consideration, which, in the case of conveyance by sale or exchange, is at least equal in value, including the mineral estate, or, in the case of conveyance by interchange, is of approximately equal value, including the mineral estate, to the lands being conveyed by the Secretary. The Secretary shall insert in any such quitclaim deed such terms, convenants, conditions, and reservations as the Secretary deems necessary to ensure protection of the public interest, including protection of the scenic, wildlife, and recreation values of the National Forest System and provision for appropriate public access to and use of lands within the System. The preceding sentence shall not be applicable to deeds issued by the Secretary to lands outside the boundary of units of the National Forest System.

SEC. 3. The National Forest System lands which may be sold, exchanged, or interchanged under this Act are those the sale or exchange of which is not practicable under any other authority of the Secretary, which have a value as determined by the Secretary of not more than $150,000, and which are—

(1) parcels of forty acres or less which are interspersed with or adjacent to lands which have been transferred out of Federal ownership under the mining laws and which are determined by the Secretary, because of location or size, not to be subject to efficient administration;

(2) parcels of ten acres or less which are encroached upon by improvements occupied or used under claim or color of title by persons to whom no advance notice was given that the improvements encroached or would encroach upon such parcels, and who in good faith relied upon an erroneous survey, title search, or other land description indicating that there was not such encroachment; or

(3) road rights-of-way, reserved or acquired, which are substantially surrounded by lands not owned by the United States and which are no longer needed by the United States, subject to the first right of abutting landowners to acquire such rights-of-way.

SEC. 4. Any person to whom lands are conveyed under this Act shall bear all reasonable costs of administration, survey, and appraisal incidental to such conveyance, as determined by the Secretary. In determining the value of any lands or interest in lands to be conveyed under this Act, the Secretary may, in those cases in which the Secretary determines it would be in the public interest, exclude from such determination the value of any improvements to the lands made by any person other than the Government. In the case of road rights-of-way conveyed under this Act, the person to whom the right-of-way is conveyed shall reimburse the United States for the value of any improvements to such right-of-way which may have been made by the United States. The Secretary may, in those cases in which the Secretary determines that it would be in the public interest, waive payment by any person of costs incidental to any conveyance authorized by this Act or reimbursement by any person for the value of improvements to rights-of-way otherwise required by this section.

SEC. 5. Conveyance of any road rights-of-way under this Act shall not be construed as permitting any designation, maintenance, or use of such rights-of-way for road or other purposes except to the extent permitted by State or local law and under conditions imposed by such law.

SEC. 6. The Secretary shall issue regulations to carry out the provisions of this Act, including specification of—

(1) criteria which shall be used in making the determination as to what constitutes the public interest;

(2) the definition of and the procedure for determining "approximately equal value"; and

(3) factors relating to location or size which shall be considered in connection with determining the lands to be sold, exchanged, or interchanged under clause (1) of section 3.

SEC. 7. Nothing in this Act shall authorize conveyance of Federal lands within the National Wilderness Preservation System, National Wild and Scenic Rivers System, National Trails System, or National Monuments. Nothing in this Act shall authorize sale of Federal lands, within National Recreation Areas.

SEC. 8. (a) The Act of December 4, 1967 (81 Stat. 531), is amended by inserting before the phrase "public school district" wherever it appears, and before the phrase "public school authority" the second time it appears, the words "State, county, or municipal government or".

(b) The Act of December 4, 1967 (81 Stat. 531), is further amended by adding the following at the end thereof: "Lands may be conveyed to any State, county, or municipal government pursuant to this Act only if the lands were being utilized by such entities on the date of enactment of this sentence. Lands so conveyed may be used only for the purposes for which they were being used prior to conveyance.".

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

12-28-82

1510

The Honorable David A. Stockman
Director, Office of Management
and Budget
Washington, D.C. 20503

Dear Mr. Stockman:

As requested by your office, here are our views on the enrolled bill, S. 705, "To authorize the Secretary of Agriculture to convey certain National Forest System lands, and for other purposes."

The Department of Agriculture strongly recommends that the President approve the enrolled bill.

S. 705 would authorize the Secretary of Agriculture to sell, exchange, or interchange all right, title and interest, including the mineral estate, to certain National Forest System lands when the Secretary determines it to be in the public interest. Interchange is a simplified form of land exchange, defined in the bill as an exchange of titles to lands of approximately equal value made without a formal appraisal. A quitclaim deed would convey the land sold, exchanged, or interchanged. Any conveyance could be made to a State or political subdivision of a State as well as to private parties. Payment for the lands could be in cash, interests in land, or other lands and would be of equal or approximately equal value.

The lands which would be sold, exchanged or interchanged are of three types: (1) tracts of 40 acres or less interspersed with or adjacent to patented mineral claims which cannot be efficiently administered; (2) parcels of 10 acres or less which are encroached upon by improvements occupied or used by persons who relied upon an erroneous survey, title search or land description and who had not been given advance notice that their improvements would encroach upon the Federal land; or (3) road rights-of-way, either reserved or acquired, substantially surrounded by privately owned lands and which are no longer needed by the United States. The tracts which would be disposed of could not have a value of more than $150,000. In determining value of the tract, the Secretary could waive the value of any improvements made by any person other than the Government.

The enrolled bill would require persons receiving these Federal lands to bear the costs of conveyance unless waived by the Secretary. Conveyance of road rights-of-way would require reimbursement to the United States by the recipient for the value of any improvements made by the United States. The abutting landowners would be given the first opportunity to acquire the road rights-of-way. The bill would prohibit conveyance of any Federal lands within the National Wilderness Preservation System, the National Wild and Scenic Rivers System, the National Trails System, or National Monuments. Lands within National Recreation Areas could not be sold but could be exchanged.

Section 8 of S. 705 would amend the Act of December 4, 1967 (81 Stat. 531). The 1967 Act authorizes the Secretary of Agriculture, when negotiating a land exchange with a public school district under the General Exchange Act of 1922, to accept cash in lieu of land for a portion or all of the value of the selected Federal land. This amendment would broaden the 1967 Act and authorize cash equalization in exchanges of National Forest System land with States, counties and municipal governments in addition to the present authority for public school districts if the States or local governments were utilizing the Federal lands proposed for exchange at the time of enactment. The authority provided by this section would not be limited to the specific types of National Forest System lands encompassed by other sections of S. 705.

This Department, as part of its legislative program, has sought the passage of legislation to authorize the conveyance of certain small tracts of National Forest System land for several years. Existing authorities are not adequate to handle the unique nature of these tracts or present procedural requirements so imposing that costs become prohibitive. The bill has received extensive consideration by the 97th Congress and, we believe, represents well-defined, appropriate authority to deal with conveyance of small tracts where such disposal is in the interest of the United States. The bill incoporates most of the amendments which we recommended to the Senate Agriculture and Energy and Natural Resources Committees. Those not incorporated have been resolved through discussions with Committee staff.

In summary, the enrolled bill would help reduce costs of land conveyance, reduce the likelihood of disputes with adjoining landowners, and reduce the possibility of litigation or private relief legislation involving land disputes. We anticipate that this authority will be used in conjunction with other lands authorities and will be funded as part of the overall lands program. We strongly urge the President to approve the enrolled bill.

Sincerely,

/s/ Block

J. Lamar Beesley
DEC 22 1982

cc:Director of Lands

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Public Law 97-465

Public Law 97-465
97th Congress

An Act

To authorize the Secretary of Agriculture to convey certain National Forest System lands, and for other purposes.

Jan. 12, 1983
[S. 705]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for purposes of this Act—

National Forest System, land conveyance.
16 USC 521c.
Definitions.

(1) the term "person" includes any State or any political subdivision or entity thereof;

(2) the term "interchange" means a land transfer in which the Secretary and another person exchange titles to lands or interests in lands of approximately equal value where the Secretary finds that such a value determination can be made without a formal appraisal and under such regulations as the Secretary may prescribe; and

(3) the term "Secretary" means the Secretary of Agriculture of the United States.

16 USC 521d.

SEC. 2. The Secretary is authorized, when the Secretary determines it to be in the public interest—

(1) to sell, exchange, or interchange by quitclaim deed, all right, title, and interest, including the mineral estate, of the United States in and to National Forest System lands described in section 3; and

(2) to accept as consideration for the lands sold, exchanged, or interchanged other lands, interests in lands, or cash payment, or any combination of such forms of consideration, which, in the case of conveyance by sale or exchange, is at least equal in value, including the mineral estate, or, in the case of conveyance by interchange, is of approximately equal value, including the mineral estate, to the lands being conveyed by the Secretary. The Secretary shall insert in any such quitclaim deed such terms, convenants, conditions, and reservations as the Secretary deems necessary to ensure protection of the public interest, including protection of the scenic, wildlife, and recreation values of the National Forest System and provision for appropriate public access to and use of lands within the System. The preceding sentence shall not be applicable to deeds issued by the Secretary to lands outside the boundary of units of the National Forest System.

16 USC 521e.

SEC. 3. The National Forest System lands which may be sold, exchanged, or interchanged under this Act are those the sale or exchange of which is not practicable under any other authority of the Secretary, which have a value as determined by the Secretary of not more than $150,000, and which are—

(1) parcels of forty acres or less which are interspersed with or adjacent to lands which have been transferred out of Federal ownership under the mining laws and which are determined by the Secretary, because of location or size, not to be subject to efficient administration;

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(2) parcels of ten acres or less which are encroached upon by improvements occupied or used under claim or color of title by persons to whom no advance notice was given that the improvements encroached or would encroach upon such parcels, and who in good faith relied upon an erroneous survey, title search, or other land description indicating that there was not such encroachment; or

(3) road rights-of-way, reserved or acquired, which are substantially surrounded by lands not owned by the United States and which are no longer needed by the United States, subject to the first right of abutting landowners to acquire such rights-of-way.

16 USC 521f.

SEC. 4. Any person to whom lands are conveyed under this Act shall bear all reasonable costs of administration, survey, and appraisal incidental to such conveyance, as determined by the Secretary. In determining the value of any lands or interest in lands to be conveyed under this Act, the Secretary may, in those cases in which the Secretary determines it would be in the public interest, exclude from such determination the value of any improvements to the lands made by any person other than the Government. In the case of road rights-of-way conveyed under this Act, the person to whom the right-of-way is conveyed shall reimburse the United States for the value of any improvements to such right-of-way which may have been made by the United States. The Secretary may, in those cases in which the Secretary determines that it would be in the public interest, waive payment by any person of costs incidental to any conveyance authorized by this Act or reimbursement by any person for the value of improvements to rights-of-way otherwise required by this section.

Right-of-way.

Waiver.

16 USC 521g.

SEC. 5. Conveyance of any road rights-of-way under this Act shall not be construed as permitting any designation, maintenance, or use of such rights-of-way for road or other purposes except to the extent permitted by State or local law and under conditions imposed by such law.

Regulations.
16 USC 521h.

SEC. 6. The Secretary shall issue regulations to carry out the provisions of this Act, including specification of—

(1) criteria which shall be used in making the determination as to what constitutes the public interest;

(2) the definition of and the procedure for determining "approximately equal value"; and

(3) factors relating to location or size which shall be considered in connection with determining the lands to be sold, exchanged, or interchanged under clause (1) of section 3.

Restrictions.
16 USC 521i.

SEC. 7. Nothing in this Act shall authorize conveyance of Federal lands within the National Wilderness Preservation System, National Wild and Scenic Rivers System, National Trails System, or National Monuments. Nothing in this Act shall authorize sale of Federal lands, within National Recreation Areas.

16 USC 484a.

SEC. 8. (a) The Act of December 4, 1967 (81 Stat. 531), is amended by inserting before the phrase "public school district" wherever it appears, and before the phrase "public school authority" the second time it appears, the words "State, county, or municipal government or"

(b) The Act of December 4, 1967 (81 Stat. 531), is further amended by adding the following at the end thereof: "Lands may be conveyed to any State, county, or municipal government pursuant to this Act only if the lands were being utilized by such entities on the date of enactment of this sentence. Lands so conveyed may be used only for the purposes for which they were being used prior to conveyance.". 16 USC 484a.

Approved January 12, 1983.

LEGISLATIVE HISTORY—S. 705 (H.R. 3021):

HOUSE REPORT No. 97-492, pt. 1 accompanying H.R. 3021 (Comm. on Agriculture).
SENATE REPORTS: No. 97-332 (Comm. on Agriculture Nutrition, and Forestry) and No. 97-490 (Comm. on Energy and Natural Resources).
CONGRESSIONAL RECORD, Vol. 128 (1982):
Aug. 19, considered and passed Senate.
Dec. 21, considered and passed House.

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APPENDIX

APPENDIX A - SMALL TRACTS ACT --A CHRONOLOGY OF EVENTS LEADING TO THE ENACTMENT OF PUBLIC LAW 97-465

1973	The Forest Service's lack of authority to dispose of isolated parcels of National Forest System lands is discussed in a paper prepared by Lands Staff. The paper identified mineral fractions and abandoned road rights-of-way.
1974-1976	Broader issue of disposal of public lands raised during congressional deliberations of legislation leading up to passage of the Federal Lands Policy and Management Act of 1976.
1977	Proposal made by Forest Service for USDA Legislative Program for 95th Congress to permit disposal of mineral fractions and road rights-of-way. Draft legislation prepared within Forest Service to authorize Secretary of Agriculture to dispose of National Forest System lands on designated "special land adjustment areas," this disposal will facilitate overall management of the National Forest System. This legislation did not advance.
1978	Proposed legislation for conveyance of National Forest System lands included in USDA Legislative Program for 96th Congress.
1/15/79	96th Congress convened.
1/25/79	Draft legislation and transmittal letters to Speaker of the House and President of the Senate prepared by the Forest Service. Formal review process begins. As drafted, proposal would authorize conveyance by sale or exchange of tracts of National Forest System lands (1) of 40 acres or less interspersed with mineral patents, (2) of 5 acres or less encroached upon by private parties due to an erroneous non-Federal survey, title search or land description, and (3) that are road rights-of-way no longer needed. Receipts from conveyance would be placed in a special Treasury fund for acquisition of lands to be added to the National Forest System. Proposal is dubbed the "Small Tracts Act."
8/13/79	USDI responds to USDA draft legislation that, while supporting proposal, raises concerns with some provisions, particularly retention of mineral interests and survey of tracts to be conveyed.

12/20/79	OMB resolves differences between USDI and USDA and clears draft legislation. The provision establishing a special Treasury fund for the receipts is dropped out. Letter signed by the Secretary transmitting the proposal to the Speaker of the House and President of the Senate is sent to Congress.
1/22/80	USDA legislative proposal introduced as H.R. 6257, "To authorize the Secretary of Agriculture to convey certain National Forest System lands, and for other purposes," by Congressman James Weaver of Oregon by request. Referred jointly to Committees on Agriculture and Interior and Insular Affairs.
5/5/80	H.R. 7260 "To authorize the conveyance of certain Federal lands and the issuance of certain patents, and for other purposes," introduced by Congressman John Seiberling. Referred to Committee on Interior and Insular Affairs. Bill identical to H.R. 6257, except that it would require persons receiving National Forest System lands conveyed to bear administrative and survey costs and contains direction to USDI to issue patents on public lands.
5/19/80	USDA report on H.R. 7260, recommending provisions dealing with conveyance of National Forest System lands be enacted, sent to Committee on Interior and Insular Affairs. Subcommittee on Public Lands holds hearing on H.R. 7260. Associate Deputy Chief Housley testifies as USDA witness on Hill, recommending that the bill be enacted.
9/10/80	Deputy Chief Nelson testified as USDA witness on H.R. 6257, "strongly recommending enactment," before Subcommittee on Forests, Committee on Agriculture. Subcommittee marked-up H.R. 6257 on the same day, adopting clarifying and supplementary amendments and reported bill favorably to full Committee.
9/24/80	H.R. 6257 reported favorably by Committee on Agriculture with amendments. Committee adopts provisions in H.R. 7260 not in H.R. 6257; also adopts amendment prohibiting conveyance of any National Forest System lands in the National Wilderness Preservation System and includes "State and local governments" in definition of "persons" eligible to acquire National Forest System land under bill.
9/26/80	H.R. 6257 reported favorably by Committee on Interior and Insular Affairs after adopting amendments to place a $150,000 "cap" on value of any one parcel conveyed and other refinements to bill.

12/1/80	H.R. 7260 reported favorably by Committee on Interior and Insular Affairs. All provisions in H.R. 7260 dealing with conveyances of National Forest System land removed from bill since they are included in H.R. 6257. H.R. 6257 passes the House under suspension of the rules. Bill referred jointly to Senate Agriculture, Nutrition and Forestry, and Energy and Natural Resources Committees.
12/15/80	H.R. 6257 passes Senate after discharging the two Committees from further consideration. No hearings were held. Amendments were made during floor debate to include Wild and Scenic Rivers, National Trails and National Recreation Areas in National Forest System lands prohibited from disposal. Also adopted a nongermane amendment by Senator Stevens of Alaska to stabilize the rents charged by the Federal Government for rental of Alaska Railroad lands.
12/16/80	H.R. 6257 with Senate amendments returned to House. After floor debate, bill approved by House. No Conference Committee action.
12/16/80	96th Congress adjourned.
12/19/80	USDA report on enrolled bill sent to Director, OMB, recommending President approve H.R. 6257. Department of Transportation report to OMB on enrolled bill recommended President not sign bill because of the addition of the Senate amendment dealing with the Alaska Railroad.
12/29/80	President Carter pocket vetoes H.R. 6257 because of the Alaska Railroad provision. President states that he supports provisions regarding conveyance of National Forest System lands and urges the 97th Congress to enact similar legislation.
1/5/81	97th Congress convened.
1/19/81	S. 160 introduced by Senator Schmitt and referred to Committee on Energy and Natural Resources. Bill limited to just 5-acre encroachments caused by erroneous or incomplete Federal surveys. In remarks in Congressional Record, Senator cites Federal survey on Lincoln National Forest which caused several adjoining landowners to encroach on National Forest.
2/2/81	Request received from Committee on Agriculture, Nutrition and Forestry for a USDA report and position on S. 160.

(CASE STUDY STARTS HERE)

3/12/81	S. 705, "To authorize the Secretary of Agriculture to convey certain National Forest System lands, and for other purposes," introduced by Senator Domenici of New Mexico and referred to Committee on Agriculture, Nutrition and Forestry. Bill nearly identical to H.R. 6257, as passed by 96th Congress, except that encroachment on Federal lands is limited to 10 acres instead of 5 acres and caused by an erroneous Federal survey. In remarks in Congressional Record, Senator indicates his interest in bill results from the erroneous or incomplete Federal survey on the Lincoln National Forest.
3/17/81	Request received from Committee for a USDA report and position on S. 705.
4/6/81	H.R. 3021, "To authorize the Secretary of Agriculture to convey certain National Forest System lands, and for other purposes," introduced by Congressmen Marlenee and Weaver. Bill nearly indentical to H.R. 6257, as passed by 96th Congress, except provision regarding Alaska Railroad deleted. Bill referred jointly to Committees on Agriculture and Interior and Insular Affairs.
5/31/81	Forest Service sends to Congressman Lujan of New Mexico, in response to his request, a drafting service containing Agency's preferred version of the "small tracts" legislation including a provision establishing a special fund from receipts from disposal of small tracts of National Forest System lands to be used for acquiring lands.
6/11/81	H.R. 3898, "To authorize the Secretary of Agriculture to convey certain National Forest System lands, and for other purposes," introduced by Congressman Lujan, which is the drafting service provided by Forest Service. Bill referred jointly to Committees on Agriculture and Interior and Insular Affairs. Bill is similar to H.R. 3021.
6/22/81	USDA report on H.R. 3021, recommending bill be enacted if amended, cleared and sent to Chairmen of Committees on Agriculture and Interior and Insular Affairs. USDA amendments broaden encroachment tracts to those caused by both Federal and non-Federal surveys, and recommended a third type of conveyance for small tracts--interchange.
	Hearing held by Subcommittee on Forests, Family Farms, and Energy, Committee on Agriculture on H.R. 3021 and H.R. 3898. Deputy Chief Housley testified as USDA witness, "strongly urging prompt enactment" of H.R. 3021, recommending adoption of amendments described in USDA report. Congressman Lujan testifies on H.R. 3898.

7/15/81	H.R. 3021 marked up and ordered favorably reported to full Committee by Subcommittee on Forests, Family Farms, and Energy. Adopted most of USDA amendments. Also adopted new provisions to bill, not directly related to small tracts conveyances: (1) statutory requirements for congressional oversight of National Forest System land exchanges, (2) broadening a 1967 Act regarding land exchanges with local school districts to include States and counties, and (3) creating a program for sale of individual or small groups of trees to individuals (small salvage sales). Provisions of H.R. 3898 incorporated into H.R. 3021. Forest Service representative present during Subcommittee markup.
9/3/81	Forest Service offers suggestions to Committee staff for amendments to Subcommittee-approved version of H.R. 3021.
10/21/81	USDA report on S. 705 and S. 160 cleared and sent to Chairman of Agriculture, Nutrition and Forestry Committee. Report recommended S. 705 be enacted with amendments in lieu of S. 160. Amendments include addition of "interchange" as a means of conveyance in addition to sale or exchange, and to include encroachment cases resulting from erroneous non-Federal, as well as Federal, surveys.
10/22/81	Hearing on S. 705 held by Subcommittee on Forestry, Water Resources and Environment, Committee on Agriculture, Nutrition and Forestry. Chief Peterson testifies as USDA witness, urging "prompt enactment" of bill and offering the amendments described in USDA report.
1/82	Administration announces in its FY 1983 budget submission to Congress the "Federal Property Review Program" (Asset Management). The authorities available to Forest Service to dispose of National Forest System lands are reviewed as part of review and inventory of Federal real property.
3/3/82	Committee on Agriculture marks up H.R. 3021, adopting technical and clarifying amendments. Forest Service representative present during markup.
3/31/82	S. 705, as amended and reported by Subcommittee, marked-up by Committee on Agriculture, Nutrition and Forestry. Most of USDA recommended amendments accepted by Forest Service representative present during markup.
4/19/82	S. 705 favorably reported to full Senate by Committee on Agriculture, Nutrition and Forestry.

4/27/82	H.R. 3021 reported favorably by Committee on Agriculture to full House. Forest Service offered suggestions for Committee report to clarify intent and scope of legislation.
5/27/82	S. 705 re-referred to Committee on Energy and Natural Resources for 30 days.
6/10/82	Request for USDA report and position on S. 705 as reported by Agriculture Committee received from Chairman of Committee on Energy and Natural Resources.
6/24/82	Hearing held on S. 705 by Subcommittee on Public Lands and Reserved Water, Committee on Energy and Natural Resources. Assistant Secretary John Crowell testified as USDA witness. Testimony was on version passed by Agriculture Committee and urged "prompt enactment of this legislation." No amendments were offered. Subcommittee subsequently marks up bill, adopting technical and clarifying amendments to version reported by Agriculture Committee, including one to broaden the prohibition on conveyance of National Forest System lands in Wild and Scenic Rivers and Trails Systems, National Monuments, and National Recreation Areas (as in H.R. 3021). Bill as amended reported favorably to full Committee.
6/30/82	Committee on Energy and Natural Resources considered Subcommittee-approved version of S. 705 and unanimously recommended bill favorably reported to full Senate. Department of Justice sends report on H.R. 3021 to Committee on Agriculture opposing provision in Committee-passed bill calling for congressional oversight of land exchanges on basis that it is a form of legislative veto, and therefore, unconstitutional.
7/1/82	S. 705 reported favorably with amendments to full Senate by Committee on Energy and Natural Resources.
8/19/82	S. 705, as reported by the two Committees with amendments, was considered by full Senate and passed. Bill passed by Senate does not contain provisions in H.R. 3021 reported by Committee on Agriculture relating to congressional oversight of National Forest System land exchanges and small timber sales on the National Forests. It does contain provisions amending 1967 Act to authorize cash equalization in land exchanges with States and local governments, as well as public school districts.

9/9/82	Letter from Congressman Marlenee to Congressman Seiberling urging the Subcommittee Chairman to act on H.R. 3021. In his September 13, 1982, response, Chairman Seiberling points out that "it is important to recognize that they [H.R. 3021/S. 705] are before us in the the new context of the Administration's policies emphasizing the sale of Federal lands with an eye to enhancing Federal revenues" (the Asset Management Program).
11/30/82	Letter from Chief Peterson to Congressman Seiberling acknowledging importance of S. 705 and H.R. 3021 to Forest Service and urging their passage, stating a preference for S. 705.
12/2/82	Hearing on S. 705 held by Subcommittee on Public Lands and National Parks, Committee on Interior and Insular Affairs. Deputy Chief Beasley testified as USDA witness strongly supporting the legislation, urging its prompt enactment, and indicating Forest Service preference of S. 705 over H.R. 3021 because it deals only with land conveyance.
12/8/82	Letter from Chief Peterson to Congressman Hansen of Idaho, sponsor of amendment to H.R. 3021 requiring congressional oversight of land exchanges, urging support of S. 705 without the amendment.
12/21/82	S. 705 considered by full House and passed after discharging the two Committees having jurisdiction from further consideration of the bill, thereby ceasing action on H.R. 3021. Congressman Seiberling inserts in the Congressional Record during floor debate the text of the Committee on Interior and Insular Affairs Report on S. 705. This report contains specific language on limitations of the legislation to "small tracts" and cautions that it cannot be used for general disposal of National Forest System lands (legislative history).
12/23/82	97th Congress adjourned.
12/28/82	USDA letter to Director, OMB, on enrolled bill S. 705 strongly recommending the President approve it.
12/30/82	The Interior and Related Agencies Appropriation Act is enacted, Section 316 of which prohibits use of appropriated funds for FY 1983 to dispose of Federal lands unless certain conditions are met (a response to the Federal Property Review Program).
1/11/83	Letter to Chief from Executive Director of Property Review Board requesting a meeting to discuss the implementation of this "first significant addition of sales authority to the Forest Service".

1/12/83	President Reagan signs S. 705, enacting it into law--Public Law 97-465.
1/14/83	Letter from Deputy Chief Beasley to Deputy Chief Housley notifying the latter that S. 705 has been enacted and advising of the congressional direction contained in the bill's passage.
5/19/83	Proposed rules implementing P.L. 97-465 published in Federal Register.
1/10/84	Final rules implementing P.L. 97-465 published in Federal Register.

☆U.S. GOVERNMENT PRINTING OFFICE: 1986-622-234/296